



# Rules of Procedure of the State Bar of California

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**Rules of Procedure  
of the  
State Bar of California**

July 2004 update includes the following revisions:

**Incorporated** four rules with revisions, which become effective on July 1, 2004:

1. Rule 60. Service of Initial Pleading
2. Rule 61. Service of Subsequent Pleadings
3. Rule 106. Disqualifications of Judges
4. Rule 663. Investigation, Response to Petition and Discovery

# **Rules of Procedure of the State Bar of California**

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**With Amendments Adopted by the Board of  
Governors Effective July 1, 2004**

**Title I:           Introductory Provisions**

**Title II:           State Bar Court Proceedings**

**Title III:          General Provisions**

**Title IV:          Standards For Attorney Sanctions  
For Professional Misconduct**

**Index to Titles I and II**

## **RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA**

With Amendments adopted by the Board of Governors effective July 1, 2004.

### **PREAMBLE**

These Rules of Procedure of the State Bar of California are promulgated by the Board of Governors of the State Bar pursuant to Business and Professions Code section 6086 in order to facilitate and govern proceedings in the State Bar Court, the Office of Chief Trial Counsel and the Office of Probation.

These Rules are organized as follows:

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**TITLE I. INTRODUCTORY PROVISIONS**

**STATE BAR NOTE**

Formerly TRP Division I Title and Definitions

**RULE 1. TITLE**

These rules shall be known and cited as the Rules of Procedure of the State Bar of California.

Eff. Sept. 1, 1989.  
Source: TRP 1.

**RULE 2. DEFINITIONS**

As used in these rules:

- 2.02 “Appellant” is a party in a State Bar Court proceeding who requests review by the Review Department under rule 301 or 308. Use of the terms “appellant” and “appellee” in these rules shall not be construed to imply that the scope of review by the Review Department is other than as set forth in rule 305(a).
- 2.04 “Appellee” is a party in a State Bar Court proceeding who is an opposing party of an appellant as defined by rule 2.02.
- 2.06 “Applicant” is a party seeking admission to the State Bar in a proceeding under rule X of the Rules Regulating Admission to Practice Law in California and rules 680-687 of these rules.
- 2.08 “Assigned judge” is the hearing judge assigned to adjudicate a State Bar Court proceeding.
- 2.10 “Board of Governors” is the Board of Governors of the State Bar or designee.
- 2.12 “Board of Governors Committee on Discipline” is the committee designated by the Board of Governors to address attorney discipline matters.
- 2.14 “California State Bar Court Reporter” is the publication of the State Bar of California in which opinions of the State Bar Court, Review Department are published.
- 2.16 “Chief Trial Counsel” is the Chief Trial Counsel of the State Bar appointed pursuant to Business and Professions Code section 6079.5 or designee.
- 2.18 “Clerk” is the Clerk of the State Bar Court or designee.

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- 2.20 "Client Security Fund" is the Client Security Fund established by the State Bar pursuant to Business and Professions Code section 6140.5.
- 2.22 "Committee of Bar Examiners" is the Committee appointed by the Board of Governors to address admissions matters pursuant to Business and Professions code section 6046-6046.5.
- 2.24 "Consumer" is a consumer within the meaning of Code of Civil Procedure section 1985.3(a)(2).
- 2.26 "Complaint" is a communication which is found to warrant an investigation of alleged misconduct of a State Bar member which, if the allegations are proven, may result in discipline of the member.
- 2.28 "Complainant" is a person whose communication generates an inquiry or a complaint.
- 2.30 "Counsel" is an active member of the State Bar, or an attorney admitted pro hac vice, who is counsel of record for a party in a State Bar Court proceeding.
- 2.32 "Court" is the State Bar Court, Hearing Department, Review Department, or any judge thereof.
- 2.34 "Court days" are days on which the State Bar Court is open for business. State Bar Court holidays are indicated on a calendar published annually by the State Bar Court and available from the Clerk.
- 2.36 "Customer" is a customer within the meaning of Government Code section 7465.
- 2.38 "Days" are all calendar days, including days on which the State Bar Court is not open for business.
- 2.40 "Declaration" is a declaration complying with the requirements of Code of Civil Procedure section 2015.5, or an affidavit.
- 2.42 "Deputy Trial Counsel" is counsel from the Office of the Chief Trial Counsel representing the State Bar in State Bar Court proceedings. Where counsel other than counsel from the Office of the Chief Trial Counsel represents the State Bar in a State Bar Court proceeding, references in these rules to "deputy trial counsel" shall apply to such counsel.
- 2.44 "Disciplinary proceedings" are proceedings initiated against a member which may lead to the imposition of discipline.
- 2.46 "Executive Committee" is the committee of the State Bar Court appointed by the Presiding Judge pursuant to Business and Professions Code section 6086.65(c).
- 2.48 "Executive Director" is the Chief Executive Officer of the State Bar or designee.
- 2.50 "Financial institution" is a financial institution within the meaning of Government Code section 7465(a).
- 2.52 "Financial records" are those defined by Government Code section 7465(b).
- 2.54 "Formal proceedings" is any proceeding in the State Bar Court. The terms "State Bar Court proceeding" and "disciplinary proceeding" as used in these rules include "formal proceeding" as used in the State Bar Act, Business and Professions Code section 6000 et seq.
- 2.56 "General Counsel" is the General Counsel of the State Bar or designee.

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- 2.58 "Hearing" is any proceeding on the record before a judge of the Hearing Department, including but not limited to a conference (except a settlement conference), a hearing on a motion, an evidentiary hearing or a trial.
- 2.60 "Hearing Department" is the trial department of the State Bar Court established pursuant to Business and Professions Code sections 6079.1 and 6086.5.
- 2.62 "Hearing judge" is a judge of the Hearing Department.
- 2.64 "Initial pleading" is the notice of disciplinary charges, notice of hearing, petition, or other pleading that initiates a State Bar Court proceeding.
- 2.66 "Inquiry" is a communication concerning the conduct of a member of the State Bar received by the Office of the Chief Trial Counsel which is designated for evaluation to determine if any action is warranted by the State Bar.
- 2.68 "Investigation" is the Office of the Chief Trial Counsel's process of obtaining, evaluating and reviewing evidence and information.
- 2.70 (a) "Judge" is a judge of the State Bar Court appointed pursuant to Business and Professions Code section 6079.1 or 6086.65, and includes judges pro tempore as defined in paragraph (b) of this rule.
- (b) "Judge pro tempore" refers to judges pro tempore appointed pursuant to Business and Professions Code section 6079.1(e).
- 2.72 "Judicial Nominees Evaluation Commission" is the designated agency of the State Bar pursuant to Government Code section 12011.5.
- 2.74 "Lawyer Review Judge" is the Review Department Judge referenced in Business and Professions Code section 6086.65(a).
- 2.76 "Member" is an attorney subject to the disciplinary or regulatory jurisdiction of the State Bar.
- 2.78 "Notice to show cause" is a "notice of disciplinary charges" or "initial pleading" as used in these rules.
- 2.80 "Office of the Chief Trial Counsel" is the office within the State Bar which is the prosecutorial arm of the State Bar in attorney discipline and regulatory matters, under the direction of the Chief Trial Counsel.
- 2.82 "Overnight mail" is any method of overnight delivery service authorized by Code of Civil Procedure section 1013.
- 2.84 "Party" is a respondent, petitioner, applicant, or member who is the subject of the State Bar Court proceeding, or the State Bar.
- 2.86 "Petitioner" is a party who has filed a petition for reinstatement, a petition for transfer to active enrollment, or any other type of petition permitted in State Bar Court proceedings.
- 2.88 "Pleading" is any paper filed by a party as part of the record in a State Bar Court proceeding, except transcripts and exhibits.
- 2.90 "President of the State Bar" is the chief elected officer of the State Bar in accordance with Business and Professions Code section 6020.
- 2.92 "Presiding Judge" is the Presiding Judge of the State Bar Court appointed pursuant to Business and Professions Code sections 6079.1 and



- 6086.65. Unless expressly provided otherwise in a particular rule, "Presiding Judge" means "Presiding Judge or designee."
- 2.94 "Proceeding" is any State Bar Court proceeding as defined by rule 3.10.
- 2.96 "Reasonable cause" is a state of facts and circumstances as would lead a person of ordinary care and prudence to believe or to entertain a strong suspicion that something is true.
- 2.98 "Respondent" is a party who is the subject of a disciplinary proceeding in the State Bar Court.
- 3.00 "Response" is a responsive pleading; in a disciplinary proceeding, the "response" is the "answer" referred to in Business and Professions Code sections 6007(e) and 6088.
- 3.02 "Review Department" is the appellate department of the State Bar Court established pursuant to Business and Professions Code section 6086.65(d).
- 3.04 "Settlement conference" is a conference in a State Bar Court proceeding conducted for the purpose of compromise without trial, which shall not be on the record, provided that any agreement among the parties may be memorialized on the record.
- 3.06 "State Bar" is the State Bar of California.
- 3.08 "State Bar Court" is the adjudicative tribunal established pursuant to Business and Professions Code sections 6079.1, 6086.5 and 6086.65.
- 3.10 "State Bar Court proceeding" is any proceeding in the State Bar Court, including but not limited to a "formal proceeding" as referenced in the State Bar Act, Business and Professions Code section 6000 et seq.
- 3.12 "Supervising Judge" is the Supervising Judge of the Hearing Department" selected in accordance with these rules.
- 3.14 "Supreme Court" is the Supreme Court of California.
- 3.16 "Trial" is an evidentiary hearing on the merits of a State Bar Court proceeding before a hearing judge. "Trial" does not include hearings on motions, or probable cause hearings pursuant to Business and Professions Code section 6007(b).
- 3.18 "Trust Account Financial Records" are financial records which a member must maintain in accordance with the Rules of Professional Conduct of the State Bar.

Eff. Sept. 1, 1989. Revised: January 1, 1996.  
Source: Title 1, TRP 2; Title II, Rule 3.

### **RULE 3. REFERENCES TO STATUTES AND RULES**

All references in these rules to statutes and rules are to statutes and rules as amended.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: New.

## **TITLE II. STATE BAR COURT PROCEEDINGS**

### **DIVISION I. GENERAL PROVISIONS**

#### **RULE 10. SCOPE OF RULES**

The rules in Title II govern the procedure in all State Bar Court proceedings commenced on or after their effective date, and all proceedings pending in the State Bar Court on that date, unless in a particular proceeding the Court orders the application of former rules based on a determination that injustice would otherwise result, and except that the former Transitional Rules of Procedure shall remain in effect where specifically provided and/or where not superseded by the revised rules of Titles I, II and III.

Eff. January 1, 1995. Revised & renumbered January 1, 1996.  
Source: New (but see TRP Revised 109).

## **RULE 12. ASSIGNMENT OF JUDGES PRO TEMPORE**

Judges pro tempore may be assigned to adjudicate State Bar Court proceedings in the Hearing Department when, in the discretion of the Presiding Judge, it has been determined that a hearing judge is unavailable to serve without undue delay to the proceeding.

Eff. January 1, 1995. Revised & renumbered: January 1, 1996.

Source: First sentence: TRP 104.5; second sentence: new.

## **RULE 14. DISPOSITION OF PENDING MATTERS FOLLOWING EXPIRATION OF JUDGE'S TERM**

Unless otherwise directed by the Supreme Court, the Board of Governors may appoint a judge whose term has expired to serve as a judge pro tem to complete matters which were pending before the judge at the expiration of his or her term of office.

Eff. January 1, 1995. Revised & renumbered: January 1, 1996.

Source: TRP 107 (substantially revised).

## **RULE 20. PUBLIC NATURE OF STATE BAR COURT PROCEEDINGS**

All State Bar Court proceedings shall be public, except settlement conferences and except as otherwise provided by law, by these rules, or by order of the Court pursuant to rule 23.

Eff. January 1, 1995. Revised: January 1, 1996.

Source: TRP 225(a)(i) (substantially revised).

## **RULE 21. CONFIDENTIAL PROCEEDINGS**

Proceedings under Business and Professions Code section 6007(b)(3) and moral character proceedings shall be confidential, except that the applicant or member may waive confidentiality.

Eff. January 1, 1995. Revised: January 1, 1996; July 1, 2002.

Source: TRP 225(a)(i) (substantially revised).

## **RULE 22. PUBLIC RECORDS CONCERNING RESIGNATIONS**

- (a) The filing of a written resignation with disciplinary charges pending pursuant to California Rules of Court, rule 960, and the resulting transfer to inactive status shall be public.
- (b) A copy of the written resignation and the record of the perpetuated evidence, if any, shall be available for public inspection.

Eff. January 1, 1995. Revised: January 1, 1996.

Source: TRP 225(c) (substantially revised).

## **RULE 23. ORDERS SEALING PORTIONS OF RECORD**

- (a) As used in this rule, the term "protected material" includes a hearing, testimony, exhibit, pleading or other document, which is part of the record in a public proceeding but has been ordered sealed under this rule.
- (b) A motion to seal protected material must be filed in the hearing department and, absent a showing of good cause for the delay, the motion may not be made for the first time on review.
- (c) A motion for an order sealing a portion of the record shall be supported by a showing of specific facts establishing that a statutory privilege or constitutionally protected interest of a party, non-party or witness outweighs the compelling public interest in the public nature of the proceeding. The relief sought shall be narrowly tailored to serve the specific interest sought to be protected. The motion may be filed under seal and if so filed shall be treated as protected material, until further order of the court.
- (d) Protected material shall be kept under seal by the Clerk, and shall be marked and maintained by other custodians in a manner calculated to prevent improper disclosure.



- (e) All persons to whom protected material is disclosed shall be given a copy of the applicable order sealing a portion of the record by the person making the disclosure.
- (f) Unless otherwise ordered, protected material may only be disclosed to:
  - (1) Parties to the proceeding and counsel;
  - (2) Personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and
  - (3) Personnel of the Office of Probation when necessary for their official duties.
- (g) Orders of the Hearing Department under this rule shall be reviewable by the Review Department under rule 300. The hearing judge or the Presiding Judge may order that the materials be sealed pending further order of the Review Department or the Supreme Court.
- (h) Nothing in this rule shall prohibit a party from requesting that portions of evidence be redacted or from filing motions in limine.

Eff. January 1, 1995. Revised: January 1, 1996; January 1, 2004.

Source: New.

#### **RULE 24. DELIBERATIONS NOT PUBLIC.**

The deliberations of judges of the State Bar Court are confidential.

Eff. January 1, 1995. Revised: January 1, 1996.

Source: TRP 225(e).

#### **RULE 30. PROCEEDINGS TO BE RECORDED OR REPORTED**

All hearings, trials, and Review Department oral arguments in State Bar Court proceedings shall be recorded by electronic equipment or reported by other methods approved by the Executive Committee. Copies of such recordings in public proceedings shall be available for purchase from the Clerk.

Eff. January 1, 1995.

Source: First sentence: TRP 271(a); second sentence: new (but see TRP 225(b)(i)).

#### **RULE 31. PREPARATION OF TRANSCRIPTS**

The official transcript is prepared under the direction of the State Bar Court. Upon request, and advance payment of the cost the Clerk shall cause to be prepared an original and one copy of an official transcript. A party ordering an official transcript of a pending proceeding shall serve a copy of the transcript order on all opposing parties. The original transcript shall be filed with the Clerk and the copy shall be furnished to the requesting party. Additional copies may be obtained from the Clerk upon payment of the cost. Payment may be waived under rule 422(b).

Eff. January 1, 1995. Revised: January 1, 1996.

Source: TRP 271(b); see also TRP 225(b)(i).

#### **RULE 32. PHOTOGRAPHING, RECORDING AND BROADCASTING**

Photocopying, recording for broadcasting, broadcasting or audio-recording to make personal notes of public State Bar Court proceedings shall be permitted only on written order of the assigned judge in the Hearing Department, or the assigned panel, if pending in the Review Department. A person or entity may seek the permission of an assigned judge or panel to photograph, record, broadcast, or audio-record by submitting the form approved by the Executive Committee at least five days prior to the proceeding in question. The clerk shall notify the parties that such a request has been received. The assigned judge or panel shall consider those factors relevant to a nonjury proceeding set forth in subdivision (e)(3) of rule 980, California Rules of Court. The assigned judge or panel may deny the request or limit or restrict the extent of the requested photographing, recording, or broadcasting, or condition the order on an agreement by the person or entity making the request to pay any increased court-incurred costs. When permission to audio-tape is granted, recordings shall not be used for any purpose other than as personal notes.

Eff. January 1, 1995. Revised: January 1, 1996; July 1, 1999.

Source: TRP 225(b)(ii).

## **DIVISION II. COMMENCEMENT OF PROCEEDINGS; VENUE; FILING AND SERVICE; COMPUTATION OF TIME.**

### **RULE 50. COMMENCEMENT OF PROCEEDING**

A State Bar Court proceeding is commenced by the filing of an initial pleading.

Eff. January 1, 1995.

Source: New (but see first sentence of TRP 550).

### **RULE 51. PERIOD OF LIMITATIONS**

(a) A disciplinary proceeding based solely on a complainant's allegation of a violation of the State Bar Act or Rules of Professional Conduct shall be initiated within five years from the date of the alleged violation.

(b) For purposes of paragraph (a) of the rule, a violation of the State Bar Act or the Rules of Professional Conduct is deemed to have been committed when every element of the alleged violation has occurred, except where the alleged violation is a continuing offense, in which case the violation is deemed to have been committed at the termination of the entire course of conduct.

(c) The period set forth in paragraph (a) of the rule shall be tolled during the time that any of the following exist:

(1) The member continues to represent the complainant, a member of the complainant's family, or the complainant's business or employer;

(2) The complainant is under the age of majority, is insane, or is physically or mentally incapacitated;

(3) Civil, criminal, or administrative investigations or proceedings arising out of substantially the same acts or circumstances that provide the basis for the alleged violations are pending with any governmental agency, court, or tribunal;

(4) The member conceals facts constituting the violation;

(5) The member fails to cooperate with the investigation of the alleged violations;

(6) The member makes false or misleading statements to the State Bar concerning the alleged violations;

(7) The disciplinary investigation or proceeding is abated consistent with the Rules of Procedure of the State Bar.

(8) The member is participating in an Alternative Dispute Resolution Mediation Discipline program, Agreement in Lieu of Discipline Prosecution program, or other authorized diversion program. Upon successful completion of the program, the underlying allegations will be barred pursuant to paragraph (a).

(9) The investigation is terminated by admonition;

(10) The complaint or investigation is pending before the Complainants' Grievance Panel. The State Bar may initiate disciplinary proceedings within two years after the conclusion of proceedings before the Complainants' Grievance Panel; or

(11) The member is suspended from the practice of law and is required to show rehabilitation pursuant to Standard 1.4(c)(ii), Standards Governing Attorney Sanctions for Professional Misconduct, prior to being reinstated to active practice of law if allegations are used solely to rebut a member's claims of rehabilitation.

(d) If a prospective complainant dies before the expiration of the period set forth in paragraphs (a) and (c) of the rule, a surviving family member or executor or administrator for the decedent's estate may file a complaint with the State Bar on behalf of the decedent within two years after the date of death.

(e) Paragraph (a) of this rule does not limit the authority of the State Bar to initiate a disciplinary proceeding based on information received from a source independent of a time-barred complainant.

- (f) The member and State Bar may agree in writing to waive or extend the limitations set forth in this rule.
- (g) This rule does not apply to reinstatement proceedings conducted under Rule 660 et seq.
- (h) This rule shall apply to complaints and reports received by the State Bar after July 1, 1995.

Eff. July 1, 1995.  
Source: New.

#### **RULE 52. VENUE**

State Bar Court proceedings shall be initiated:

- (a) in the County of Los Angeles if (1) the party who is the subject of the proceeding maintains or maintained his or her principal office for the practice of law in, or (2) the party who is the subject of the proceeding resides or resided or is or was located in, or (3) the alleged conduct that is the subject of the proceeding was committed in, any of the counties of Imperial, Inyo, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara or Ventura;
- (b) in the City and County of San Francisco if (1) the party who is the subject of the proceeding maintains or maintained his or her principal office for the practice of law in, or (2) the party who is the subject of the proceeding resides or resided or is or was located in, or (3) the alleged conduct that is the subject of the proceeding was committed in, any county of the state other than those set forth in paragraph (a) of this rule; or
- (c) if neither (a) nor (b) applies, or if both (a) and (b) apply, either in the County of Los Angeles or in the City and County of San Francisco.

Eff. January 1, 1995.  
Source: TRP 250.

#### **RULE 53. PROCEEDINGS IN ALTERNATIVE COUNTIES**

The Court may conduct proceedings, or parts thereof, outside of Los Angeles or San Fran-

cisco for the convenience of parties and witnesses, and upon timely motion of any party. An order granting a motion under this rule may be conditioned upon payment by the moving party of all or part of any resulting costs to the Court or to opposing parties. Orders entered under this rule shall be reviewable under rule 300.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: TRP 252 (substantially revised).

#### **RULE 54. TRANSFER OF VENUE**

- (a) A motion for transfer of venue by any party must be filed in the Court where the proceeding is pending as soon as practical, and in no event later than the last day of the discovery period.
- (b) Motions for transfer of venue may be made:
  - (1) on the ground that the proceeding was initiated in an improper venue, and/or
  - (2) on the ground that the proceeding should be transferred to a different venue for the convenience of witnesses and to promote the ends of justice.
- (c) Rulings on motions for transfer of venue shall be reviewable pursuant to rule 300.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: New (but see TRP 251, 252).

#### **RULE 55. PLACE OF FILING PLEADINGS**

Pleadings shall be filed with the Clerk in the venue in which the proceeding is located, except in case of emergency or as otherwise ordered. Pleadings filed with the Review Department may be filed in either location of the State Bar Court.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: Provisional Rules of Practice, rule 1112 (substantially revised); see also TRP 240.

#### **RULE 60. SERVICE OF INITIAL PLEADING**

- (a) The initial pleading in any State Bar Court proceeding shall be served by the initiating party upon all other parties, except in

those matters in which service of the initial pleading is made by the Clerk.

- (b) Service upon a member who is the subject of a proceeding shall be addressed to the member at the latest address shown on the official membership records of the State Bar pursuant to Business and Professions Code section 6002.1(a)(1). If the member's latest address is within the United States, such service shall be made by certified mail, return receipt requested. If the member's latest address is outside the United States, such service shall be made by recorded delivery. If the person to be served is not a member and is not required by Business and Professions Code section 6002.1 to maintain an address on the official membership records of the State Bar, the person may be served by any method permitted under the Code of Civil Procedure for service of process. Where a written request, signed by the member, is made to the Office of the Chief Trial Counsel to serve counsel for a party, service shall only be made upon counsel.
- (c) Service upon the State Bar shall be made by serving the Office of the Chief Trial Counsel in the appropriate venue by certified mail, return receipt requested, except where another method of service is specified in the rules governing a particular type of proceeding.

Eff. January 1, 1995. Revised: January 1, 1996; July 1, 2003; July 1, 2004.

Source: Paragraph (b): TRP 243 (part); paragraphs (a) and (c): new.

#### **RULE 61. SERVICE OF SUBSEQUENT PLEADINGS**

- (a) Each pleading filed subsequent to the initial pleading, except joint pleadings, shall be accompanied by proof of service on all other parties.
- (b) Service upon the State Bar shall be made by serving the designated deputy trial counsel of the Office of the Chief Trial Counsel. Members shall be served at the

address maintained by the member on the official membership records of the State Bar pursuant to Business and Professions Code section 6002.1(a)(1), unless, with respect to the proceeding in connection with which the service is made, the member has counsel of record or has expressly requested in the response that service be made upon the member at a different address. If the person to be served is not a member and is not required by Business and Professions Code section 6002.1 to maintain an address on the official membership records of the State Bar, the person shall be served at the address given in the most recent pleading filed by the person, or, if the person has not filed a pleading giving an address, the person may be served at any address or location and by any method permitted under the Code of Civil Procedure for service of pleadings.

- (c) A party or attorney whose address changes while a proceeding is pending or who desires to be served with subsequent pleadings and notices at a different address, shall file and serve on all parties a written notice of change of address and a specific request that all future service be made upon the party or attorney at the new address.
- (d) Service of subsequent pleadings shall be made according to Code of Civil Procedure sections 1011 or 1012, or 1013(c) and (d), or by depositing said pleadings in the State Bar inter-office mail. If service is made by United States mail, by State Bar inter-office mail, by personal delivery, or by overnight mail, the period of notice given by such service, or the time for doing any act in response to such service, shall be computed in accordance with rule 63.
- (e) In lieu of service by personal delivery or overnight mail, service may be made by facsimile transmission, if the party being served consents to be served by facsimile transmission. The proof of service shall state (i) that such consent was obtained; (ii) the date and time that the facsimile transmission was made (iii) the telephone



numbers of the transmitting and receiving machines and (iv) that the transmission was reported by the transmitting machine to be complete and without error. Proper service by facsimile transmission shall be treated as equivalent to service by overnight mail.

Eff. January 1, 1995. Revised: January 1, 1996; July 1, 2004.  
Source: Paragraphs (a)-(c): TRP 241 (substantially revised); see also TRP 242, 243; paragraph (d): new.

#### **RULE 62. PROOF OF SERVICE**

- (a) Proof of service by a party shall be made as provided in Code of Civil Procedure section 1013a.
- (b) Proof of service by the Clerk shall be made as provided in Code of Civil Procedure section 1013a(4).

Eff. January 1, 1995.  
Source: TRP 242 (part) (substantially revised).

#### **RULE 63. COMPUTATION OF TIME**

- (a) Computation of time in State Bar Court proceedings shall be made according to Code of Civil Procedure sections 12, 12a, 12b, 13, 13a and 13b. When service is made by United States mail or State Bar inter-office mail, by the Court or by a party, the provisions of Code of Civil Procedure section 1013(a) shall apply. When service is made by overnight mail or by facsimile transmission, any right or duty to do any act or make any response within a prescribed period shall be extended by two (2) court days.
- (b) References in these rules to days within which an act must be performed, or to giving a specified number of days of notice, refer to calendar days, except that when the period allowed is five (5) days or less, and the time for performance or the notice given is not extended by virtue of service by mail, the act shall be performed within, or the notice period shall consist of, the stated number of court days.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: Paragraph (a): TRP 242, 243 (part) (substantially revised); paragraph (b): new.

#### **RULE 64. ORDERS SHORTENING OR EXTENDING TIME; LATE FILING**

- (a) Time limits and notice periods provided for in these rules may be shortened or extended by order of the Court, for good cause, on motion of a party or on the Court's own motion.
- (b) Upon motion and for good cause, the Court may grant an extension of time to file a pleading or permit late filing of a pleading.
- (c) A motion or stipulation for an order shortening time shall be supported by a statement of the reasons therefor, which in the case of a motion shall be in the form of a declaration. Motions for orders shortening time shall be served by personal delivery or overnight mail. The Court may direct the Clerk to notify the parties by telephone that any opposition to a motion to shorten time must be filed and served by a date set by the Court.
- (d) Parties filing motions for extension of time or for late filing shall state in a declaration whether the other parties to the proceeding have been requested to consent to the extension or late filing, and whether or not such consent has been given.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: New (but see Provisional Rules of Practice, rules 1113, 1143, 1200, 1302).

#### **RULE 75. PRE-FILING, EARLY NEUTRAL EVALUATION CONFERENCE**

- (a) If the Office of the Chief Trial Counsel and the member are unable to reach agreement on the resolution or disposition of a matter prior to the filing of a notice of disciplinary charges, an Early Neutral Evaluation Conference, conducted by a State Bar Court hearing judge, shall be held within fifteen (15) days of the request of either party.
- (b) At the Conference, the Early Neutral Evaluation judge shall provide the parties with an oral neutral evaluation of the al-

leged facts and charges and the potential for the imposition of discipline. If a resolution of the matter which requires the approval of the Court is reached by the parties at the Conference, the Office of the Chief Trial Counsel shall document the resolution and shall submit it to the Early Neutral Evaluation judge for approval or rejection.

- (c) In order for the Early Neutral Evaluation judge to provide a meaningful evaluation, the Office of the Chief Trial Counsel shall provide the Early Neutral Evaluation judge with a copy of the draft notice of disciplinary charges. Each party may also provide the Early Neutral Evaluation judge with such documents and information that the party believes supports his or her position. The Early Neutral Evaluation Conference shall be confidential and each party may designate any documents he or she provides for in camera inspection only and not to be exchanged with the opposing party. All documents provided to the Early Neutral Evaluation judge shall be returned to the respective parties at the conclusion of the Conference.
- (d) Unless otherwise stipulated by the parties, the Early Neutral Evaluation judge shall not act as the trial judge in a subsequent proceeding involving the same facts.
- (e) The provisions of this rule shall apply to all proceedings in which the notice of disciplinary charges was not filed on or before January 29, 1999.

Eff. February 1, 1999.  
Source: New.

### **DIVISION III. PLEADINGS, MOTIONS AND STIPULATIONS**

#### **RULE 100. GENERAL RULES OF PLEADING**

Each assertion in a pleading shall be simple, concise and direct.

Eff. January 1, 1995.  
Source: New.

#### **RULE 101. NOTICE OF DISCIPLINARY CHARGES**

- (a) Unless otherwise specified in the rules governing a particular type of proceeding, a notice of disciplinary charges is the initial pleading in a disciplinary proceeding.
- (b) The notice of disciplinary charges shall:
  - (1) Cite the statutes, rules, or court orders alleged to have been violated, or to warrant the action proposed.
  - (2) Contain a statement of facts constituting the alleged violations in sufficient detail to permit the preparation of a defense.
  - (3) Relate the alleged facts to specific statutes, rules or court orders alleged to have been violated or to warrant the action proposed.
  - (4) Contain the following language in capital letters at or near the beginning of the notice of disciplinary charges:

“IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOUR DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.

“STATE BAR RULES REQUIRE YOU TO FILE YOUR WRITTEN RESPONSE TO THIS NOTICE WITHIN TWENTY DAYS AFTER SERVICE.

“IF YOUR DEFAULT IS ENTERED AND THE DISCIPLINE IMPOSED BY THE SUPREME COURT IN THIS PROCEEDING INCLUDES A PERIOD OF ACTUAL SUSPENSION, YOU WILL REMAIN

SUSPENDED FROM THE PRACTICE OF LAW FOR AT LEAST THE PERIOD OF TIME SPECIFIED BY THE SUPREME COURT. IN ADDITION, THE ACTUAL SUSPENSION WILL CONTINUE UNTIL YOU HAVE REQUESTED, AND THE STATE BAR COURT GRANTED, A MOTION FOR TERMINATION OF THE ACTUAL SUSPENSION. AS A CONDITION FOR TERMINATING THE ACTUAL SUSPENSION, THE STATE BAR COURT MAY PLACE YOU ON PROBATION AND REQUIRE YOU TO COMPLY WITH SUCH CONDITIONS OF PROBATION AS THE STATE BAR COURT DEEMS APPROPRIATE. SEE RULE 205, RULES OF PROCEDURE FOR STATE BAR COURT PROCEEDINGS.”

- (5) Contain a notice that the respondent may be ordered to pay costs pursuant to Business and Professions Code section 6086.10.

- (c) If the State Bar intends to seek the involuntary inactive enrollment of the respondent pursuant to Business and Professions Code section 6007(c), the notice of disciplinary charges should include a statement that upon a finding that the respondent’s conduct poses a substantial threat of harm to the interests of the respondent’s clients or the public, the respondent may be involuntarily enrolled as an inactive member of the State Bar.

Eff. January 1, 1995. Revised: January 1, 1996; January 1, 1997; July 2, 2000.

Source: TRP 550 (substantially revised); paragraph (d), see TRP 552(b)(ii).

#### **RULE 102. MOTIONS WHICH EXTEND TIME TO FILE RESPONSE**

The filing of a timely motion to dismiss under rule 262(b), (c), (d) or (e), shall postpone the party’s obligation to file the response to the notice of disciplinary charges or other initial pleading until ten (10) days after:

- (a) notice or service of the Court’s denial of the motion;
- (b) proper service of the initial pleading, if the motion was granted under rule 262(b);

- (c) service of an amended pleading if the motion was granted with leave file an amended initial pleading under rule 262(c).

Eff. January 1, 1995. Revised: July 1, 2001.

Source: New (but see TRP 554.1).

#### **RULE 103. RESPONSE TO NOTICE OF DISCIPLINARY CHARGES**

- (a) Unless the time is extended by Court order or as provided in paragraph (b), a written response to the notice of disciplinary charges shall be filed and served by the respondent within twenty (20) days after service of the notice of disciplinary charges in the manner prescribed by rules 54 and 61. Except for motions authorized by rule 262(c), demurrers and motions for further particulars are not allowed.
- (b) The time within which the response shall be filed may be extended once before its expiration, by not more than fifteen (15) days, by written stipulation signed by the parties thereto, without necessity for an order of the Court. All such stipulations shall be filed with the Clerk prior to the original expiration date.
- (c) The response shall contain:
  - (1) an address for service on the respondent in the proceeding; and
  - (2) either:
    - (i) a specific admission or specific denial of the allegations set forth in the notice of disciplinary charges, and such other facts by way of defense as may be relevant; or
    - (ii) a plea of nolo contendere, subject to the approval of the State Bar Court. The plea of nolo contendere shall (1) be signed by the respondent and his or her attorney, if any, and (2) contain an acknowledgement by the respondent that he or she completely understands that the plea of nolo contendere shall be considered the same as an admis-



sion of the truth of the facts alleged in the notice of disciplinary charges and of culpability for the purposes of the disciplinary proceeding.

- (d) If no written response has been filed within the time set forth in paragraph (a) of this rule, including any extensions as provided in paragraphs (a) and (b) of this rule, and no motion under rule 102 is pending, the deputy trial counsel may elect to proceed by the default.

Eff. January 1, 1995. Revised: January 1, 1996; January 1, 1997; July 1, 2001.

Source: TRP 552(a), 552(b) (substantially revised).

#### **RULE 104. AMENDED PLEADINGS**

- (a) Amendment to Initial Pleading Prior to Response or Default. An initial pleading may be amended once before the filing of the response or the entry of default without court approval. The party initiating the proceeding shall serve the amended initial pleading in accordance with rule 60, and the time to respond shall be calculated from the date the amended pleading is served.
- (b) Other Amendments to the Initial Pleading Before Commencement of Trial. For good cause, the Court may permit amendments to the initial pleading in addition to those permitted by paragraph (a) of this rule. Unless the Court rules that the amendment is to correct insubstantial errors in the initial pleading:
- (1) The party initiating the proceeding shall serve the amended initial pleading in accordance with rule 60, and the opposing parties shall receive a reasonable time to file a response to the amended initial pleading and prepare a defense; and
  - (2) If the opposing party's default has been entered, the entry of default shall be vacated.
- (c) Amendments to Initial Pleading During or After Trial.

- (1) Contested Trials. During or after a contested trial, the Court may permit the initial pleading to be amended. Unless the initial pleading is amended to conform to proof of issues raised by the pleadings or to include matters proven by evidence introduced without objection, the opposing parties are entitled to a reasonable time to file a response to the amendment and prepare a defense.
- (2) Default Trials. In default cases, leave to substantially amend the initial pleading shall not be granted unless the default is vacated and the amended initial pleading is served on the opposing parties in accordance with rule 60.

- (d) Amended Pleadings. Pleadings other than initial pleadings may be amended once without court approval before a response is due or is served, whichever occurs first, or, if the pleading is one to which no response is permitted and no trial date in the proceeding has been set, within twenty days after the pleading is served. Otherwise, a party may amend a pleading by Court order for good cause or by stipulation of the parties.

Eff. January 1, 1995. Revised: January 1, 1996.

Source: TRP 557 (substantially revised).

#### **RULE 105. MOTIONS**

- (a) Unless the Court orders otherwise, all motions, including any motion based in whole or in part on the grounds that a continuance is needed due to the time constraints of the respondent's practice, shall be made in writing.
- (b) Except as otherwise ordered or provided in these rules, an opposing party shall have ten (10) days from service of a motion to file and serve a written response.
- (c) Facts relied upon in support of or in opposition to a motion shall be supported by declaration, except facts already in the record or subject to judicial notice. Exhibits submitted in support of or in opposition

to a motion shall be authenticated by declaration unless already admitted in evidence.

- (d) Unless otherwise ordered, written motions shall be submitted without hearing.

Eff. January 1, 1995. Revised: January 1, 1996; January 2, 2000.

Source: New (but see rules 1140-1144, Provisional Rules of Practice).

#### **RULE 106. DISQUALIFICATION OF JUDGES**

- (a) A judge shall be disqualified if he or she is subject to disqualification under Code of Civil Procedure section 170.1; or

- (b) A judge pro tempore shall be disqualified if the judge pro tempore or the office with which he or she is affiliated, is or represents:

- (1) a party to pending litigation involving any party or counsel in the proceeding, or the law office with which any party or counsel is affiliated, or

- (2) a party represented by any party or counsel in the proceeding, or the law office with which any party or counsel is affiliated.

- (c) Only the provisions of Code of Civil Procedure sections 170.2, 170.3(b), 170.4, and 170.5(b)-(g) shall apply to judicial disqualification in State Bar Court proceedings. A judge who recuses himself or herself shall promptly give notice of the recusal to the judge who has authority to assign the matter to another judge.

- (d) An assigned judge's consideration or rejection of a stipulation in a proceeding shall not be a basis for disqualification of the judge from that proceeding. Submission of a stipulation to the assigned judge for approval constitutes a waiver of any contention that the judge is disqualified due to the judge's consideration or rejection of the stipulation. The parties may submit a stipulation to a settlement judge pursuant to rule 133 prior to the filing of a notice of disciplinary charges or at any time thereafter. The settlement judge shall, in the absence of the stipulation of the parties, be

disqualified from presiding over the trial of the matter. In a proceeding in which a party seeks relief from default, it shall not be a basis for disqualification that the judge heard evidence or filed a decision prior to the filing of the motion for relief from default.

- (e) If a judge refuses or fails to disqualify himself or herself, any party may file a motion to disqualify the judge. The motion shall contain a verified statement setting forth the facts constituting the grounds for disqualification. Copies of the motion shall be served on the opposing party and upon the judge alleged to be disqualified. The following time limits and procedures shall apply:

- (1) The motion to disqualify shall be made within the earliest of the following dates:

- (i) ten (10) days after the ground for disqualification first became known to the party making the motion or to that party's counsel;

- (ii) prior to commencement of trial;

- (iii) as to a judge of the Review Department, twenty (20) days prior to oral argument held before the Review Department; and

- (iv) if the assignment of the matter to the judge, or the grounds for disqualification were not known to the moving party sufficiently in advance to permit the filing of a written motion in accordance with paragraphs (e), the party shall file the motion promptly and shall make an oral motion at the start of the next hearing, trial, conference, or argument.

- (2) Within ten (10) days after service of the motion, the judge may file a consent to disqualification, in which case the judge shall promptly to the judge who has authority to assign the matter to

another judge. Alternatively, the judge may file a verified answer admitting or denying any or all of the allegations contained in the party's motion and setting forth any additional facts material or relevant to the question of disqualification. The clerk shall transmit a copy of the judge's answer to each party.

- (3) A judge who fails to file a consent or answer within the time allowed shall be deemed to have consented to his or her disqualification and the Clerk shall promptly notify the judge who has authority to assign the matter to another judge.
- (4) No judge who refuses to recuse himself or herself shall pass upon his or her own disqualification or upon the sufficiency in law, fact, or otherwise, of the statements of disqualification filed by a party. In every such case, the question of disqualification shall be heard and determined by another judge selected by the presiding judge or the supervising judge.
- (5) The judge deciding the question of disqualification may decide the question upon the basis of the statement of disqualification and answer and upon such written arguments as the judge requests. If the judge deciding the question of disqualification determines that the judge is disqualified, the judge hearing the question shall promptly give notice of the disqualification to the judge who has authority to assign the matter to another judge.
- (f) A party who is dissatisfied with the ruling on a motion for disqualification made by the judge designated by paragraph (e) may file a petition for review. A petition to review a ruling on a motion to disqualify a judge may be filed pursuant to rule 300 within ten (10) days after the ruling is made (if it is first made orally) or within ten (10) days after service of notice of the

ruling (if it is first made in writing). The Review Department shall act on the petition on an expedited basis.

Eff. January 1, 1995. Revised: January 1, 1996; July 1, 2001; July 1, 2004.

Source: TRP 230 (substantially revised).

#### **RULE 108. CONSOLIDATION**

- (a) Consolidation may be ordered upon motion of any party, on stipulation of the parties or on the Court's own motion with notice to the parties and an opportunity to be heard. Except where good cause is shown, motions to consolidate shall be filed within thirty (30) days of the filing of the notice of disciplinary charges or other initial pleading in the most recent of the proceedings sought to be consolidated. Proceedings may be consolidated if no substantial rights of any party will be prejudiced and if consolidation will not cause undue delay of either matter. Proceedings involving different members but common questions of fact may be consolidated for all purposes or for the purpose of joint hearing or joint trial.
- (b) Proceedings in the Hearing Department shall not be consolidated with proceedings in the Review Department. The Presiding Judge may order that a proceeding in the Review Department be remanded to the Hearing Department for a ruling as to whether consolidation is appropriate.
- (c) If the proceedings which a party seeks to consolidate are pending in different venues, a motion for transfer of venue must be granted prior to the filing of a motion to consolidate.

Eff. January 1, 1995. Revised: January 1, 1996; February 1, 1999; January 1, 2001.

Source: TRP 262 (substantially revised).

#### **RULE 109. SEVERANCE**

Severance may be ordered upon motion of any party, on stipulation of the parties or on the Court's own motion with notice to the parties and an opportunity to be heard. Motions to

sever should be filed as soon as practical. A proceeding may be severed for the convenience of the parties, to avoid substantial prejudice to any party or when conducive to expedition and economy.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: New.

#### **RULE 115. CONTINUANCES**

A motion for continuance, including but not limited to any motion based in whole or in part on the grounds that the continuance is needed due to the time constraints of the respondent's practice, shall be in writing and shall only be granted upon a showing of good cause. Stipulations for continuance require Court approval.

Eff. January 1, 1995. Revised: January 1, 2000.  
Source: New (but see rule 1131, Provisional Rules of Practice).

#### **RULE 116. ABATEMENT**

(a) Upon motion by any party, or upon the Court's motion after notice to the parties, the Court may order any proceeding before it abated in whole or in part. Abatement of a proceeding stays the proceeding in the State Bar Court and tolls all time limitations in the proceeding, except that the Court may grant a motion for perpetuation of evidence.

(b) In determining a motion pursuant to this rule, the Court may consider any relevant factor, including the following:

- (1) the need for disposing of the proceeding at the earliest time;
- (2) the extent to which the issues in a related proceeding are the same or substantially the same as those before it;
- (3) the extent to which the proceeding would probably be delayed by awaiting the trial or an appeal in a related proceeding;
- (4) the extent to which the proceeding would probably be expedited by await-

ing the disposition in a related proceeding;

- (5) the extent to which evidence to be adduced in a related proceeding would aid in the determination of the State Bar Court proceeding;
  - (6) the extent to which evidence may be unavailable in the State Bar Court proceeding because of any delay resulting from the abatement;
  - (7) the extent to which parties, witnesses or documents are currently unavailable to participate in the State Bar Court proceeding for reasons beyond the parties' control;
  - (8) the extent to which a party or witness may be prejudiced in a related proceeding by withholding or failing to withhold further action; and
  - (9) the extent to which a Client Security Fund claim would be unnecessarily delayed.
- (c) For purposes of this rule, a "related proceeding" is any civil, criminal, administrative, or State Bar Court proceeding in which a party, real party in interest, or witness is also a party or witness in the proceeding before the Court, or any civil, criminal, administrative, or State Bar Court proceeding which involves the subject matter of the proceeding before the Court.
- (d) Review of a hearing judge's ruling on a motion under this rule may be sought pursuant to rule 300.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: TRP 350 (substantially revised).

#### **RULE 117. MENTAL INCAPACITY**

- (a) No disciplinary proceeding shall be initiated or conducted against a member who has been judicially declared by a court of record to be of unsound mind or, on account of mental condition, incapable of managing his or her affairs, until a subsequent judicial determination has been made to the contrary.



- (b) Upon motion of a party, a party's counsel, or the Court, the Court may order any pending disciplinary proceeding abated, for such time and upon such terms as it deems proper, because of the member's inability to assist in or conduct the defense of the proceeding due to mental illness or infirmity, or where probable cause has been found to believe that such inability exists.

Eff. January 1, 1995.

Source: TRP 351 (substantially revised).

#### **RULE 118. MILITARY SERVICE**

If any member who is the subject of a State Bar Court proceeding is on active duty in the armed forces of the United States, the Court shall abate the proceeding if the member's military service will materially impair the member's ability to participate in the proceeding.

Eff. January 1, 1995.

Source: TRP 352 (substantially revised).

#### **RULE 130. STIPULATIONS GENERALLY**

It is the duty of all parties, if practical, to endeavor to arrive at pretrial stipulations concerning some or all of the issues in the proceeding. All stipulations shall be signed by each party and by each party's counsel, if any.

Eff. January 1, 1995. Revised: January 1, 1996.

Source: TRP 401 (substantially revised).

#### **RULE 131. STIPULATIONS AS TO FACTS ONLY**

- (a) Stipulations as to facts only shall set forth the following:
- (1) an acknowledgement that stipulations as to facts are binding on all parties regardless of the disposition or degree of discipline recommended or imposed, and
  - (2) a statement that respondent either admits the truth of the facts set forth in the stipulation or pleads nolo contendere to those facts. If the respondent pleads nolo contendere to the stipu-

lated facts, the stipulation shall include an acknowledgement that the respondent completely understands that the plea of nolo contendere shall be considered the same as an admission of the stipulated facts for purposes of determining whether respondent is culpable of professional misconduct and that the stipulated facts will be used for determining whether respondent is culpable.

- (b) Where the parties agree that relief from stipulations as to facts is appropriate, court approval is nonetheless required. Motions for relief must demonstrate that such relief is necessary to prevent a miscarriage of justice or for other extraordinary reasons. Evidence to prove or disprove a stipulated fact is inadmissible.

Eff. January 1, 1995. Revised: January 1, 1997.

Source: New (but see TRP 401, 405, 407(c); Provisional Rules of Practice, rule 1320).

#### **RULE 132. STIPULATIONS AS TO FACTS AND CONCLUSIONS OF LAW**

- (a) The parties in a disciplinary matter may stipulate as to facts and conclusions of law regarding culpability, reserving the question of disposition.
- (b) A proposed stipulation as to facts and conclusions of law in a disciplinary matter shall set forth each of the following:
- (1) a statement of the investigations or proceedings included;
  - (2) a statement of acts or omissions acknowledged by the respondent as cause for discipline;
  - (3) conclusions of law, drawn from and specifically referring to the facts admitted by the respondent, regarding the respondent's culpability of violating specified statutes and/or Rules of Professional Conduct;
  - (4) a statement that respondent either (i) admits that the facts set forth in the stipulation are true and that he or she

is culpable of violations of the specified statutes and/or Rules of Professional Conduct; or (ii) pleads nolo contendere to those facts and violations. If the respondent pleads nolo contendere, the stipulation shall include an acknowledgement that the respondent completely understands that the plea of nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified in the stipulation.

- (5) an enumeration of the charges, if any, to be dismissed;
- (6) a statement that the stipulation resolves the entire proceeding except as expressly set forth in the stipulation and except as to disposition;
- (7) a statement that the member acknowledges the provisions of Business and Professions Code sections 6086.10 and 6140.7;
- (8) a statement as to whether or not the parties intend to be bound by the stipulated facts even if the conclusion of law are rejected and regardless of the degree of discipline recommended or imposed; and
- (9) a statement that the respondent has been advised in writing of any pending investigations or proceedings not resolved by the stipulation except for investigations, if any, by criminal law enforcement agencies, identified by investigation case number or proceeding case number, and complaining witness name(s), if any. Such information shall not be set forth in the stipulation, but the stipulation shall recite that all such information has been provided to the respondent in a separate document, as of a specified disclosure date. The specified disclosure date shall be not more than thirty (30) days before the stipulation is filed.

- (c) Stipulations as to facts and conclusions of law may include partial stipulations as to facts bearing on aggravation and mitigation. The parties may waive the right to an evidentiary hearing on aggravation and mitigation by submitting a stipulation containing a complete statement of aggravating and mitigating circumstances.

Eff. January 1, 1995. Revised: January 1, 1996; March 2, 1996; January 1, 1997.

Source: New (but see TRP 401, 405-407).

### **RULE 133. STIPULATIONS AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

A proposed stipulation as to facts, conclusions of law, and disposition shall set forth each of the following:

- (1) an acknowledgement that stipulations as to proposed disposition are not binding upon the Supreme Court;
- (2) a statement of the investigations or proceedings included;
- (3) a statement of acts or omissions acknowledged by the respondent as cause or causes for discipline;
- (4) conclusions of law, drawn from and specifically referring to the facts admitted by the respondent, regarding the respondent's culpability of violating specified statutes and/or Rules of Professional Conduct;
- (5) a statement that respondent either
  - (i) admits the facts set forth in the stipulation are true and that he or she is culpable of violations of the specified statutes and/or Rules of Professional Conduct or
  - (ii) pleads nolo contendere to those facts and violations. If the respondent pleads nolo contendere, the stipulation shall include each of the following:
    - (a) an acknowledgement that the respondent completely understands that the plea of nolo contendere

shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified in the stipulation; and

- (b) if requested by the Court, a statement by the deputy trial counsel that the factual stipulations are supported by evidence obtained in the State Bar investigation of the matter.
- (6) an enumeration of the charges, if any, to be dismissed;
- (7) a statement that the stipulation resolves the entire proceeding except as expressly set forth in the stipulation;
- (8) a statement of aggravating and mitigating circumstances;
- (9) the disposition to be recommended or imposed;
- (10) a statement that the member acknowledges the provisions of Business and Professions Code sections 6086.10 and 6140.7;
- (11) a statement as to whether or not the parties intend to be bound by the stipulated facts contained in the stipulation even if the conclusions of law and/or stipulated disposition are rejected; and
- (12) a statement that the respondent has been advised in writing of any pending investigations or proceedings not resolved by the stipulation except for investigations, if any, related to investigations by criminal law enforcement agencies, identified by investigation case number or proceeding case number, and complaining witness name(s), if any. Such information shall not be set forth in the stipulation, but the stipulation shall recite that all such information has been provided to the respondent in a separate document, provided to the respondent

not more than thirty (30) days before the stipulation is received by the Court.

Eff. January 1, 1995. Revised: January 1, 1996; March 2, 1996; January 1, 1997; July 1, 2000.  
Source: TRP 406 (substantially revised).

#### **RULE 134. STIPULATIONS AS TO DISPOSITION**

- (a) The parties in a disciplinary matter may stipulate as to disposition after facts establishing culpability, and conclusions of law, have been previously adjudicated by the Court and/or stipulated to by the parties.
- (b) Stipulations as to disposition shall include or have attached thereto a stipulated statement of all factual findings and legal conclusions relied upon in support of the stipulated disposition which are not contained in a written decision filed by the Court or a previously filed stipulation.
- (c) Stipulations as to disposition shall set forth each of the following:
  - (1) an acknowledgment that stipulations as to proposed disposition are not binding upon the Supreme Court;
  - (2) a statement of the pending investigations or proceedings included;
  - (3) a statement that the stipulation resolves the entire proceeding except as expressly set forth in the stipulation;
  - (4) all factual stipulations regarding aggravation and/or mitigation upon which the parties wish to rely;
  - (5) the disposition to be recommended or imposed;
  - (6) a statement that the member acknowledges the provisions of Business and Professions Code section 6086.10;
  - (7) a statement as to whether or not the parties intend to be bound by the stipulated facts contained in the stipulation even if the conclusions of law and/or stipulated disposition are rejected; and



- (8) a statement that the respondent has been advised in writing of any pending investigations or proceedings not resolved by the stipulation except for investigations, if any, related to investigations by criminal law enforcement agencies, identified by investigation case number or proceeding case number, and complaining witness name(s), if any. Such information shall not be set forth in the stipulation, but the stipulation shall recite that all such information has been provided to the respondent in a separate document, not more than thirty (30) days before the stipulation is received by the Court.

Eff. January 1, 1995. Revised: January 1, 1996; March 2, 1996; July 1, 2000.

Source: New (but see TRP 405-407).

#### **RULE 135. APPROVAL OF STIPULATIONS BY HEARING JUDGES**

- (a) Court approval is not required for stipulations as to facts under rule 131, unless the respondent has pleaded *nolo contendere* to those facts. Court approval is required for stipulations pursuant to rules 132, 133 and 134. The assigned judge shall determine whether the stipulation is fair to the parties and adequately protects the public. A stipulation which satisfies the requirements of rule 133(a)(5)(ii)(b) shall be deemed to be supported by an adequate factual basis, and no further evidence of the underlying facts shall be required. A stipulation which satisfies the requirements of rules 131, 132, 133 or 134 shall be deemed voluntary. The court may approve the stipulation as written or on condition that the parties accept specified modifications, or the Court may reject the stipulation.
- (b) Once approved by the Court, the stipulation shall bind the parties in the proceedings to which it relates unless withdrawn or modified with approval of the Court, upon good cause shown and upon motion of a party filed within fifteen days

of service of the order approving stipulation, or on the Court's motion after notice to the parties.

- (c) If the Court rejects a stipulation, the parties shall be relieved of all effects of the stipulation except factual stipulations to which they agree to be bound if the stipulation is rejected. Rejection of a stipulation shall not bar approval of a later stipulation in the same case, but the parties shall first disclose to the Court the fact that a previous stipulation was rejected.
- (d) Review of an order made under this rule may be sought only pursuant to rule 300 and only with regard to the orders on motions to modify or withdraw from a stipulation.

Eff. January 1, 1995. Revised: January 1, 1996; January 1, 1997; July 1, 2001.

Source: TRP 407 (substantially revised).

### **DIVISION IV. SUBPOENAS AND DISCOVERY**

#### **RULE 150. INVESTIGATION SUBPOENAS**

- (a) Motion to Quash. Upon the service of an investigation subpoena pursuant to Business and Professions Code section 6049(b), the member who is the target of the investigation, or any other person or entity served with the subpoena, may file a motion to quash the subpoena pursuant to Business and Professions Code section 6051.1 and this rule.
- (1) The motion shall be filed within five (5) court days after receipt of actual notice or service of written notice if required by these rules, whichever is earlier, and shall be served by overnight mail on the State Bar investigator, deputy trial counsel or other authorized agent requesting the records, as designated in the subpoena, or if no such person is designated, on the Chief Trial Counsel.
- (2) The motion must be supported by one or more declarations based on personal

knowledge and filed and served together with the motion.

- (3) The proceedings on the motion shall be governed by rule 156.

(b) Trust Account Financial Records. The sole ground on which a motion to quash a trust account financial records subpoena may be made or granted shall be that the records sought by the subpoena are not trust account financial records which the member must maintain in accordance with the Rules of Professional Conduct.

(c) Other Financial Records. If the challenged subpoena seeks financial records other than trust account financial records, and if a motion to quash the subpoena under this rule is made, the records sought shall not be examined by any party until after the motion has been ruled upon. A motion to quash a subpoena for financial records other than trust account financial records may be granted on any of the following grounds:

- (1) That the subpoena does not comply with applicable statutes or State Bar rules governing the issuance or scope of such subpoenas;
- (2) That the subpoena does not describe with particularity the records sought by the subpoena;
- (3) That the subpoena was not served in the manner required by Business and Professions Code section 6069(b) on the member or members whose financial records are sought by the subpoena, and on any other "customer" as defined in Government Code section 7465(d), no less than twenty (20) days prior to the date set for the production of records in response to the subpoena; or
- (4) That the scope of the records sought by the subpoena is not consistent with the scope and requirements of the investigation in connection with which the subpoena was issued.

(d) Non-Financial Records. If the challenged subpoena seeks documents other than financial records, a motion to quash the subpoena may be made or granted on any of the following grounds:

- (1) That the subpoena does not comply with applicable statutes or State Bar rules governing the issuance or scope of such subpoenas;
- (2) That the subpoena does not describe with particularity the records sought by the subpoena; or
- (3) That the subpoena was not properly served pursuant to Code of Civil Procedure section 1987; or
- (4) That the scope of the records sought by the subpoena is not consistent with the scope and requirements of the investigation in connection with which the subpoena was issued.

Eff. January 1, 1995. Revised: January 1, 1996.

Source: TRP 306-307, 311-312 (substantially revised).

#### **RULE 151. ISSUANCE OF DISCOVERY SUBPOENAS BY PARTIES IN STATE BAR COURT PROCEEDINGS**

- (a) In the course of discovery, any party may issue subpoenas as provided by Business and Professions Code section 6049(c) and 6085, and in accordance with the provisions of Code of Civil Procedure section 1985. Alternatively, any party may compel another party to testify at a deposition, with or without production of documents, by serving a notice to appear pursuant to Code of Civil Procedure section 1987.
- (b) Discovery subpoenas issued by any party subject to applicable provisions of the Business and Professions Code and to all provisions of Chapter 2 of Title III of Part IV of the Code of Civil Procedure (beginning with section 1985), except those pertaining to bench warrants and concealed witnesses, and except as modified or limited by these rules.

- (c) Subpoena forms may be obtained from the Clerk. Upon request, the Clerk shall issue subpoenas on behalf of parties appearing in propria persona who are not entitled to practice law in California.
- (d) The party initiating a deposition shall, subject to possible later reimbursement of costs under rules 280-284, (1) serve a copy of the subpoena on the persons or entities required; (2) obtain proper proof of such service; and (3) pay applicable witness fees or expenses.
- (e) A deposition subpoena duces tecum shall describe the requested records with particularity and shall comply with rule 153, 154, or 155, as applicable.
- (f) The party serving a deposition subpoena duces tecum may request the subpoenaed party to provide an additional unsealed copy of the requested records, provided that:
- (1) Notice of the request shall be given to all other parties;
  - (2) If a timely motion to quash the subpoena is filed, the subpoenaing party shall not inspect, copy, or use the records except as permitted by court order; and
  - (3) Within five (5) days after receiving the additional unsealed copy, or, if a motion to quash is filed, after the service of an order on a motion to quash permitting examination of the records the party that served the subpoena shall provide all other parties with accurate copies of the records, or with a reasonable opportunity to inspect and copy them.
- (b) Trial subpoenas are subject to the Business and Professions Code and to all provisions of Chapter 2 of Title III of Part IV of the Code of Civil Procedure (beginning with section 1985), except those pertaining to bench warrants and concealed witnesses, and except as modified or limited by these rules.
- (c) Subpoena forms may be obtained from the Clerk. Upon request, the Clerk shall issue subpoenas on behalf of parties appearing in propria persona who are not entitled to practice law in California.
- (d) The party initiating a trial subpoena shall, subject to possible later reimbursement of costs under rules 280-284, (1) serve a copy of the subpoena on the persons or entities required; (2) obtain proper proof of such service; and (3) pay applicable witness fees or expenses.
- (e) A trial subpoena duces tecum shall describe the requested records with particularity, and shall comply with rule 153, 154, or 155, as applicable.
- (f) The party serving a trial subpoena duces tecum may request the subpoenaed party to provide an additional unsealed copy of the requested records, provided that:
- (1) Notice of the request shall be given to all other parties;
  - (2) If a timely motion to quash the subpoena is filed, the subpoenaing party shall not inspect, copy, or use the records except as permitted by court order; and
  - (3) Within five (5) days after receiving the additional unsealed copy, or, if a motion to quash is filed, after the service

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: TRP 310(b), 318 (substantially revised).

**RULE 152. ISSUANCE OF TRIAL SUBPOENAS  
BY PARTIES IN STATE BAR COURT  
PROCEEDINGS**

- (a) A party may issue trial subpoenas as provided by Business and Professions Code

of an order on a motion to quash permitting examination of the records, the party that served the subpoena shall provide all other parties with accurate copies of the records, or with a reasonable opportunity to inspect and copy them.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: TRP 310(b), 311 (substantially revised).

#### **RULE 153. SUBPOENAS FOR TRUST ACCOUNT FINANCIAL RECORDS**

- (a) This rule governs discovery or trial subpoenas issued by the Office of the Chief Trial Counsel, after initiation of State Bar Court proceedings, which require financial institutions to produce trust account financial records of a member under Business and Professions Code sections 6049 and 6069(a).
- (b) The State Bar shall serve the subpoena on the financial institution in the manner required by the Code of Civil Procedure and shall serve the member or members whose financial records are sought in the manner specified in rule 61. The subpoena shall be served no later than ten (10) days before the financial institution is scheduled to produce records in response to the subpoena. The subpoena shall designate the name, business address and business telephone number of the State Bar investigator, deputy trial counsel or other authorized agent requesting the records.
- (c) Within five (5) court days after actual or written notice of a subpoena under these rules, whichever is earlier, any person or entity served with the subpoena or a copy thereof may file a motion with the State Bar Court to quash the subpoena. The motion shall be served by overnight mail on all parties to the proceeding.
- (d) The sole ground on which a motion to quash a subpoena under this rule may be made or granted shall be that the records sought by the subpoena do not pertain to trust accounts which the member must maintain in accordance with the Rules of Professional Conduct.

- (e) The motion must be supported by one or more declarations based on personal knowledge, filed and served with the motion.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: TRP 300-301 (substantially revised).

#### **RULE 154. SUBPOENAS FOR OTHER FINANCIAL RECORDS**

- (a) This rule governs discovery and trial subpoenas requiring financial institutions to produce financial records other than trust account financial records of a member.
- (b) (1) The subpoena shall be served on the customer whose financial records are sought pursuant to Business and Professions Code section 6069(b), on the financial entity subpoenaed, pursuant to the Code of Civil Procedure, and, to the extent not included in the foregoing, on all other parties to the proceeding in the manner specified in rule 61.
- (2) Service shall be completed at least ten (10) days prior to the date set for compliance with the subpoena.
- (c) (1) Within five (5) court days after service of a copy of a subpoena under this rule, any person or entity served with the subpoena may file a motion with the State Bar Court to quash the subpoena.
- (2) The motion shall be served by overnight mail on all parties to the proceeding.
- (3) The motion may be granted based on the grounds applicable in civil actions under California law.
- (4) The motion must be supported by one or more declarations based on personal knowledge, filed and served with the motion.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: TRP 304-307 (substantially revised).



#### **RULE 155. OTHER DISCOVERY AND TRIAL SUBPOENAS**

- (a) This rule governs all discovery and trial subpoenas, except subpoenas requiring financial institutions to produce financial records.
- (b) A copy of any subpoena governed by this rule shall be served on the person or entity subpoenaed as provided in the Code of Civil Procedure, and, in the case of a subpoena duces tecum, on all other parties to the proceeding, as provided in the rule for service of subsequent pleadings (rule 61). Respondents shall serve any customer involved pursuant to Chapter 2 (commencing with section 1985 of Title III of Part IV of the Code of Civil Procedure).
- (c) Service of a subpoena duces tecum shall be completed at least ten (10) days prior to the date set for compliance with the subpoena.
- (d) (1) Within five (5) court days after service of a subpoena under this rule, any person or entity served with the subpoena may file a motion with the State Bar Court to quash the subpoena.
- (2) The motion shall be served by overnight mail on all parties.
- (3) The motion may be granted based on the grounds applicable in civil actions under California law.
- (4) The motion must be supported by one or more declarations based on personal knowledge, filed and served with the motion.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: TRP 310-312 (substantially revised).

#### **RULE 156. PROCEEDINGS ON MOTIONS TO QUASH SUBPOENAS**

- (a) Written opposition to a motion to quash a subpoena shall be filed and served within five (5) court days after service of the motion, and in any event prior to the commencement of any hearing on the motion, provided that the Court may order otherwise.

- (b) (1) A motion to quash an investigation subpoena shall be decided by a hearing judge assigned for that purpose. A motion to quash a discovery or trial subpoena shall be decided by the judge assigned to the proceeding.
- (2) The Court may hold a hearing on the motion. If a hearing is held, it shall be set on an expedited basis.
- (3) The order on the motion shall include findings concerning any factual issues presented by the motion, and shall state the reasons for the order.
- (c) If the motion to quash seeks a stay of compliance with the subpoena pending ruling on the motion to quash, the Court may grant a stay, upon a showing of good cause, without awaiting the filing of a response to the motion.
- (d) A party may seek review of the order of the hearing judge under rule 300. The order will be reversed only if the hearing judge's factual findings are not supported by substantial evidence, or for error of law or abuse of discretion.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: New (but see TRP 307-309, 312-314).

#### **RULE 157. SUBPOENAS FOR COURT RECORDS**

Notwithstanding rules 150-155, a party issuing a subpoena to obtain public records from any court need not serve the subpoena on the target of the investigation or on the other parties to the State Bar Court proceeding.

Eff. January 1, 1995.  
Source: New.

#### **RULE 180. APPLICABILITY OF CIVIL DISCOVERY ACT**

- (a) The Civil Discovery Act (commencing with section 2016 of the Code of Civil Procedure) applies in State Bar Court proceedings whenever discovery is permitted, as limited or modified by these rules.



- (b) Except as limited by these rules, Code of Civil Procedure section 2017(d), applies to complaining witnesses and alleged victims of misconduct in any proceeding in which a member is charged with a violation of Business and Professions Code section 6106.9 or rule 3-120 of the Rules of Professional Conduct, or which arises from the criminal conviction of the member for sexual misconduct.

Eff. January 1, 1995. Revised: January 1, 1996.

Source: TRP 315 (substantially revised); see also TRP 319, 320, 321(b), 325.

#### **RULE 181. TIME PERIOD FOR COMPLETING DISCOVERY**

- (a) All parties shall complete formal discovery within one hundred twenty (120) days after service of the initial pleading unless the Court extends the discovery period pursuant to paragraph (d) or orders a shorter discovery period.
- (b) The discovery period is tolled (1) from the filing of the Clerk's entry of default until the default is set aside or (2) from the filing of a stipulation as to facts, conclusions of law and disposition until ruled upon by the Court.
- (c) Discovery requests must be served so as to allow each responding party sufficient time to respond within the discovery period.
- (d) A motion for an extension of the discovery period shall show that the party or parties seeking the extension have made reasonably diligent efforts to complete discovery within the time allowed by paragraph (a) of this rule, and that the requested extension will materially contribute to settlement of the proceeding or to the party's presentation of evidence at trial. Upon motion or stipulation, or on the Court's own motion after notice to the parties and an opportunity to respond, the Court may order reasonable extensions of the discovery period.

- (e) The amendments to paragraphs (a) and (d) shall apply to all proceedings in which the notice of disciplinary charges or other initial pleading is filed on or after February 1, 1999.

Eff. January 1, 1995. Revised: January 1, 1996; February 1, 1999.

Source: Paragraph (a): TRP 316 (substantially revised); paragraph (b)-(d): new (but see TRP 316).

#### **RULE 182. DISCOVERY CONFERENCE AND REPORT**

- (a) Within twenty (20) days after service of the responsive pleading in a proceeding in which discovery is permitted without Court order, the parties shall engage in a discovery conference at which the parties shall make a good faith effort to reach agreement as to the following:
- (1) An exchange of documents, witness names and addresses, and other information, without formal discovery requests from opposing parties, to occur on or before a date which shall be no later than ten (10) days after the discovery conference; and
  - (2) A plan and timetable for the completion of formal discovery no later than the discovery cut-off date.
- (b) No party may serve any formal discovery request until twenty (20) days after the date the responsive pleading is originally due under the applicable rule.
- (c) The parties may stipulate without leave of Court to one continuance of the discovery conference to a date not more than thirty (30) days after service of the responsive pleading. Any such stipulation shall be filed with the Court.
- (d) At the first status conference which occurs after the discovery conference, the parties shall report to the Court regarding any agreements for informal discovery reached at the discovery conference; each party's plan and timetable for conducting formal discovery; and any anticipated discovery

disputes or reasons why the parties may be unable to complete formal discovery by the discovery cut-off date.

- (e) Delays in conducting the discovery conference or in completing any agreed-upon informal exchange shall not extend the time for completion of formal discovery, except by Court order based on unforeseeable and exceptional circumstances.
- (f) A party's failure to participate in good faith in a discovery conference, or to make a good faith effort to comply with all agreements reached at a discovery conference and reported to the Court, may constitute cause for an order compelling or precluding discovery or other appropriate discovery sanctions.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: New (but see TRP 317).

#### **RULE 183. PROHIBITED DISCOVERY**

No discovery shall be conducted concerning the deliberations of judges or other persons who are or have been responsible for adjudicating attorney disciplinary or regulatory matters.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: TRP 318 (part).

#### **RULE 184. PHYSICAL AND MENTAL EXAMINATIONS**

- (a) Code of Civil Procedure section 2032 does not apply in State Bar Court proceedings.
- (b) In any proceeding in which the mental or physical condition of a member is at issue, and to the extent that discovery is permitted by rule or order of the Court:
  - (1) The State Bar may move for an order requiring the member who is the subject of the proceeding to undergo a mental and/or physical examination pursuant to Business and Professions Code section 6053. The motion and supporting evidence must demonstrate that there is good cause to require the examination. The motion shall specify the manner, con-

ditions, scope, and nature of the requested examination.

- (2) The Court, on its motion, may issue an order to show cause why a mental and/or physical examination of the member should not be ordered pursuant to Business and Professions Code section 6053. The order to show cause shall specify the manner, conditions, scope, and nature of the proposed examination, and shall afford the parties at least ten (10) days from the service of the order to show cause to file a response.
- (c) If a motion under paragraph (b)(1) or an order to show cause under paragraph (b)(2) is filed after probable cause has been found to issue a notice to show cause pursuant to Business and Professions Code section 6007(b)(3) regarding a member, the motion or order shall be filed in the involuntary inactive enrollment proceeding, and not in any other pending proceeding involving that member. The proceedings on the motion or order to show cause shall be stayed until at least ten (10) days following the appointment of counsel.
- (d) The Court may hold a hearing to determine whether the need for the examination outweighs the member's right to privacy. If so, appropriate limitations or conditions should be included in the order so as to minimize the intrusiveness of the examination.
- (e) An order requiring an examination under this rule shall provide for the selection of the physician or psychiatrist who will perform the examination, and shall specify the manner, conditions, scope, and nature of the examination to be conducted. With the approval of the Court, the parties may stipulate to have an examination conducted by a qualified expert other than a physician or psychiatrist.
- (f) The parties may stipulate to the issuance of an order for a physical or mental examination. The stipulation shall specify the manner, conditions, scope, and nature of the

examination to be conducted, and the party or parties who will bear the cost thereof. The stipulation may request that a specified physician or psychiatrist or other qualified expert be appointed to conduct the examination, or may request the Court to select a physician or psychiatrist.

- (g) Unless otherwise ordered by the Court, or otherwise stipulated, the party moving for the examination shall pay the cost thereof.
- (h) When a motion is filed or an order to show cause is issued under this rule, the Court may appoint counsel to represent the member in connection with the motion or order to show cause. The appointment and compensation of counsel shall be governed by rule 422.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: New.

#### **RULE 185. FAILURE TO MAKE OR COOPERATE IN DISCOVERY**

- (a) Prior to filing a motion to compel compliance with discovery requests, the party seeking to compel discovery shall make a reasonable and good faith attempt at an informal resolution of any issue presented by it. The motion to compel discovery shall be accompanied by a declaration stating facts showing that such a reasonable and good faith attempt was made.
- (b) A party may move to compel compliance with discovery requests no more than thirty (30) days after the date on which the discovery response was due or served. This time limit may be extended by stipulation of the parties.

Eff. January 1, 1995.  
Source: New.

#### **RULE 186. DISCOVERY SANCTIONS**

The provisions of the Civil Discovery Act relating to misuse of the discovery process apply in State Bar Court proceedings, except that provisions for monetary sanctions and the arrest of a party are inapplicable, and provided that dismissal shall not be ordered as a discovery

sanction in a disciplinary proceeding unless the Court has first considered the impact of dismissal on the protection of the public.

Eff. January 1, 1995.  
Source: TRP 321(a) (substantially revised).

#### **RULE 187. CONTEMPT PROCEEDINGS**

- (a) Whenever any witness subpoenaed to appear and give testimony or to produce books, papers or documents refuses to appear or testify or to answer any pertinent or proper questions or to produce such books, papers or documents, the party by whom or upon whose behalf the subpoena was issued may file a motion requesting the Court to report to the superior court, as provided in Business and Professions Code section 6051, that the witness is in contempt of the subpoena. A party may report a contempt to the appropriate superior court without first making a motion under this rule if that party is authorized to do so under Business and Professions Code section 6051.
- (b) Upon the filing of a motion under this rule, if it appears that the subpoena was properly issued and served and that there is no valid legal basis for the witness's noncompliance, the Court shall report the witness's contempt to the superior court.
- (c) Upon the Court's issuance of a report of contempt, the party by whom or upon whose behalf the subpoena was issued may bring a proceeding in the appropriate superior court pursuant to Business and Professions Code section 6051. The report of contempt, including its findings and conclusions, shall not be binding upon the Superior Court.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: New (but see TRP 322).

#### **RULE 188. JOINT DISCOVERY IN RELATED STATE BAR COURT PROCEEDINGS**

When two or more State Bar Court proceedings involve common questions of fact, but are not consolidated, then upon motion of any party, the Court may permit the conduct of joint dis-

covery upon such terms and conditions as may be just. Joint discovery may not be conducted unless an order permitting joint discovery has been made in each of the proceedings involved.

Eff. January 1, 1995.

Source: New.

#### **RULE 189. DISCOVERY REVIEW**

Within ten (10) days after service of notice of a discovery ruling by a hearing judge, a party may serve and file with the Clerk a petition for review of the ruling pursuant to rule 300.

Eff. January 1, 1995.

Source: TRP 324 (substantially revised).

### **DIVISION V. DEFAULTS AND TRIALS**

#### **RULE 200. DEFAULT PROCEDURE FOR FAILURE TO FILE TIMELY RESPONSE**

(a) To proceed by default upon respondent's failure to timely file a written response as provided by rule 103, the deputy trial counsel shall file and serve a written motion for entry of default on respondent. This motion shall recite:

- (1) the date of filing of the notice of disciplinary charges and the date of service thereof;
- (2) that the respondent has not timely filed a response as required by rule 103;
- (3) the minimum discipline which the deputy trial counsel intends to recommend if culpability is found, based on the evidence known to the moving party at the time the motion is filed, and, if the recommendation is less than disbarment, a statement that the State Bar Court may recommend or impose, and the Supreme Court may impose, lesser or greater discipline than recommended by the deputy trial counsel; and
- (4) the following in prominent type:

"YOUR DEFAULT WILL BE ENTERED IF NO RESPONSE IS FILED WITH THE CLERK OF THE STATE BAR COURT WITHIN TEN (10) DAYS OF SERVICE OF THIS MOTION FOR ENTRY OF DEFAULT. IF YOUR DEFAULT IS ENTERED: (1) THE FACTUAL ALLEGATIONS SET FORTH IN THE NOTICE OF DISCIPLINARY CHARGES WILL BE DEEMED ADMITTED; (2) EVIDENCE THAT WOULD OTHERWISE BE INADMISSIBLE MAY BE USED AGAINST YOU IN THIS PROCEEDING, AND (3) YOU WILL LOSE THE OPPORTUNITY TO PARTICIPATE FURTHER IN THESE PROCEEDINGS, INCLUDING PRESENTING EVIDENCE IN MITIGATION, COUNTERING EVIDENCE IN AGGRAVATION, AND MOVING FOR RECONSIDERATION, UNLESS AND UNTIL YOUR DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE PRESCRIBED GROUNDS. SEE RULES 200 ET SEQ., RULES OF PROCEDURE FOR STATE BAR COURT PROCEEDINGS."

"IF YOUR DEFAULT IS ENTERED AND THE DISCIPLINE IMPOSED BY THE SUPREME COURT IN THIS PROCEEDING INCLUDES A PERIOD OF ACTUAL SUSPENSION, YOU WILL REMAIN SUSPENDED FROM THE PRACTICE OF LAW FOR AT LEAST THE PERIOD OF TIME SPECIFIED BY THE SUPREME COURT. IN ADDITION, THE ACTUAL SUSPENSION WILL CONTINUE UNTIL YOU HAVE REQUESTED, AND THE STATE BAR COURT HAS GRANTED, A MOTION FOR TERMINATION OF THE ACTUAL SUSPENSION. AS A CONDITION FOR TERMINATING THE ACTUAL SUSPENSION, THE STATE BAR COURT MAY PLACE YOU ON PROBATION AND REQUIRE YOU TO COMPLY WITH SUCH CONDITIONS OF PROBATION AS THE STATE BAR COURT DEEMS APPROPRIATE. SEE RULE 205, RULES OF PROCEDURE FOR STATE BAR COURT PROCEEDINGS."

- (b) The motion for entry of default shall be served in the manner specified in rule 60.
- (c) If the respondent fails to file a written response with the Clerk within ten (10) days after service of the motion for entry of default, the Clerk shall enter the respondent's default by filing and serving on the respondent and deputy trial counsel a notice of entry of default. Service of the notice of entry of default on the respondent shall be



as provided in the rule for service of initial pleadings (rule 60). The notice shall include the following in prominent type:

“YOUR DEFAULT HAS BEEN ENTERED BECAUSE OF YOUR FAILURE TO TIMELY FILE A RESPONSE TO THE NOTICE OF DISCIPLINARY CHARGES FILED IN THIS PROCEEDING. THE FACTUAL ALLEGATIONS SET FORTH IN THE NOTICE OF DISCIPLINARY CHARGES HAVE BEEN DEEMED ADMITTED. YOU MAY NOT PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS AND UNTIL YOUR DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE PRESCRIBED GROUNDS. SEE RULES 200 ET SEQ., RULES OF PROCEDURE FOR STATE BAR COURT PROCEEDINGS.

“IN LIGHT OF THE ENTRY OF YOUR DEFAULT, IF THE DISCIPLINE IMPOSED BY THE SUPREME COURT IN THIS PROCEEDING INCLUDES A PERIOD OF ACTUAL SUSPENSION, YOU WILL REMAIN SUSPENDED FROM THE PRACTICE OF LAW FOR AT LEAST THE PERIOD OF TIME SPECIFIED BY THE SUPREME COURT. IN ADDITION, THE ACTUAL SUSPENSION WILL CONTINUE UNTIL YOU HAVE REQUESTED, AND THE STATE BAR COURT HAS GRANTED, A MOTION FOR TERMINATION OF THE ACTUAL SUSPENSION. AS A CONDITION FOR TERMINATING THE ACTUAL SUSPENSION, THE STATE BAR COURT MAY PLACE YOU ON PROBATION AND REQUIRE YOU TO COMPLY WITH SUCH CONDITIONS OF PROBATION AS THE STATE BAR COURT DEEMS APPROPRIATE. SEE RULE 205, RULES OF PROCEDURE FOR STATE BAR COURT PROCEEDINGS.”

(d) Upon entry of default:

(1) Unless the default is vacated:

(A) The factual allegations set forth in the notice of disciplinary charges shall be deemed admitted, unless otherwise ordered by the Court based on contrary evidence, and no further proof shall be required to establish the truth of such facts;

(B) The respondent shall be precluded from participating in any way in the proceeding, except to

file a motion to vacate the default; and

(C) Except as otherwise provided in these rules or by order of the Court, no further notices or pleadings shall be served upon the respondent except for any request for review filed by the deputy trial counsel and the decisions of the State Bar Court.

(2) Unless otherwise ordered by the Court, any settlement and pretrial conference dates set prior to the entry of default shall be vacated and the Clerk shall serve a notice of the default hearing upon the deputy trial counsel. The hearing shall be conducted in accordance with rule 202.

(3) Stipulations under rules 130-135 may be filed notwithstanding the entry of default, provided, however, that unless otherwise provided in the stipulation and approved by the Court, the filing of such stipulations shall not relieve the respondent from the default.

Eff. January 1, 1995. Revised: January 1, 1996; March 15, 1999.

Source: TRP 552.1 (substantially revised).

#### **RULE 201. PROCEDURES FOR RESPONDENT'S FAILURE TO APPEAR AS PARTY AT TRIAL; ENTRY OF DEFAULT**

(a) If a respondent fails to appear at trial in person or by counsel, the trial shall proceed unless for good cause the trial is continued.

(b) If a respondent fails to appear as a party at the trial when that respondent's default had not previously been entered in the proceeding, then the Court shall order the Clerk to enter that respondent's default, if:

(1) The notice of disciplinary charges was served on the respondent as required by the rule for service of initial pleadings (rule 60);



- (2) Notice of trial was mailed by first class mail, postage paid, to the respondent's counsel of record, or if none, to the respondent at the address provided in the response or in a notice of change of address filed by the respondent, or if none, at the respondent's address maintained pursuant to Business and Professions Code section 6002.1, or if none of the foregoing applies, at an address at which the respondent may be served pursuant to the rule for service of subsequent pleadings (rule 61); and
- (3) The respondent has not appeared at trial.
- (c) Promptly upon entry of default under this rule, the Court shall order the Clerk to file and serve upon all parties a notice of entry of default. The notice shall include the following in prominent type:

"YOUR DEFAULT HAS BEEN ENTERED BECAUSE OF YOUR FAILURE TO APPEAR AT THE TRIAL IN THIS PROCEEDING. THE FACTS SET FORTH IN THE NOTICE OF DISCIPLINARY CHARGES HAVE BEEN DEEMED ADMITTED AND DISCIPLINE MAY BE RECOMMENDED OR IMPOSED UPON YOU BASED UPON THE ADMITTED FACTS. YOU MAY NOT PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS AND UNTIL YOUR DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE PRESCRIBED GROUNDS. SEE RULES 200 ET SEQ., RULES OF PROCEDURE FOR STATE BAR COURT PROCEEDINGS."

IN LIGHT OF THE ENTRY OF YOUR DEFAULT, IF THE DISCIPLINE IMPOSED BY THE SUPREME COURT IN THIS PROCEEDING INCLUDES A PERIOD OF ACTUAL SUSPENSION, YOU WILL REMAIN SUSPENDED FROM THE PRACTICE OF LAW FOR AT LEAST THE PERIOD OF TIME SPECIFIED BY THE SUPREME COURT. IN ADDITION, THE ACTUAL SUSPENSION WILL CONTINUE UNTIL YOU HAVE REQUESTED, AND THE STATE BAR COURT HAS GRANTED, A MOTION FOR TERMINATION OF THE ACTUAL SUSPENSION. AS A CONDITION FOR TERMINATING THE ACTUAL SUSPENSION, THE STATE BAR COURT MAY PLACE YOU ON

PROBATION AND REQUIRE YOU TO COMPLY WITH SUCH CONDITIONS OF PROBATION AS THE STATE BAR COURT DEEMS APPROPRIATE. SEE RULE 205, RULES OF PROCEDURE FOR STATE BAR COURT PROCEEDINGS."

- (d) Proceedings, including the testimony of witnesses, the receipt of evidence and the argument of deputy trial counsel, may proceed immediately after the Court has ordered the Clerk to enter the respondent's default and before the default is actually entered.

Eff. January 1, 1995. Revised: January 1, 1996; March 15, 1999. January 1, 2001.

Source: TRP 555 (substantially revised).

#### **RULE 202. DEFAULT HEARINGS**

- (a) After entry of the respondent's default pursuant to rule 200 or rule 201, an expedited hearing shall be held at which the deputy trial counsel shall be entitled to introduce any evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in court proceedings. Witness testimony may be taken by oral examination or deposition.
- (b) Declarations are admissible, if:
- (1) the facts stated in the declarations are within the personal knowledge of the declarant and
  - (2) the facts are set forth with particularity
- (c) The deputy trial counsel may submit the State Bar's written evidence with a request for waiver of hearing. The Court may then take the matter under submission without a hearing.

Eff. January 1, 1995. Revised: January 1, 1996.

Source: New (but see TRP 555(e)).

#### **RULE 203. VACATING DEFAULT**

- (a) Stipulation. Prior to the commencement of the trial in a proceeding, a default entered

under rule 200 may be vacated by written stipulation of the parties, filed with the Clerk. After the commencement of trial, a default may be vacated only by court order as provided in this rule.

(b) **Motion to Vacate Improperly Entered Default.** Any party may move to vacate any default on the ground that it was not properly entered. The Court may vacate an improperly entered default on its own motion. An improperly entered default may be vacated at any time while the State Bar Court has jurisdiction of the matter. Any default entered while the respondent was on active duty in the armed forces of the United States shall be deemed to have been entered improperly.

(c) **Motion to Set Aside Default.** A respondent whose default has been properly entered under rules 200 or 201 may make a motion under this paragraph to set aside the default on the grounds of mistake, inadvertence, surprise or excusable neglect. Those grounds shall be interpreted in the same manner as in civil matters arising under Code of Civil Procedure section 473.

(1) Any motion under this paragraph shall be filed as soon as practical, and in no event later than forty-five (45) days after service of notice of the entry of default.

(2) After the expiration of the time provided in subparagraph (1) of this paragraph, a respondent seeking relief from default must prove all of the following by clear and convincing evidence:

(A) that the respondent did not receive or learn of the notice of disciplinary charges until after the expiration of the 45-day period provided in paragraph (c)(1) of this rule;

(B) that the respondent filed the motion promptly after learning of the notice of disciplinary charges; and

(C) that the respondent's failure to file a timely response and the respondent's

failure to file a timely motion prior to the expiration of the 45-day period provided in paragraph (c)(1) of this rule were excused by compelling circumstances beyond the control of the respondent.

(3) A motion under this paragraph shall be accompanied by a copy of the respondent's proposed response to the notice of disciplinary charges, unless the respondent has previously filed a response. The proposed response shall be verified and shall set forth with specificity the respondent's asserted defenses.

(4) A motion under this paragraph shall be supported by one or more declarations showing:

(A) the date on which the respondent first learned of the notice of disciplinary charges;

(B) the reason why the respondent did not file a response the notice of disciplinary charges prior to the entry of default (if no response was filed);

(C) the date on which the respondent first learned of the entry of default;

(D) the reasons or grounds for setting aside the default; and

(E) if a decision has been filed, an offer of proof of facts that the respondent expects to show if relieved from default, including any facts in mitigation.

(d) A motion to set aside a default under paragraph (c) of this rule shall not be granted on the ground that the discipline recommended by the deputy trial counsel or the Court exceeds the minimum discipline stated in the motion for entry of default pursuant to rule 200(a)(3).

(e) **Ruling on Motion.** A motion to set aside or vacate a default shall be decided on an expedited basis.

- (1) The Court may stay the proceedings pending its ruling.
- (2) The Court may vacate a default subject to appropriate conditions. If the Court sets aside a default, it shall vacate any decision it has issued.
- (3) If a motion to set aside a default is filed after the filing of the judge's decision, the judge:
  - (A) May set aside the default;
  - (B) May set aside the default for limited purposes only, or
  - (C) May deny the motion if the judge determines that the required showing has not been made or that the recommended discipline in the proceeding would not be affected by any legal contention made by the respondent, by proof of the truth of the facts set forth in the respondent's offer of proof, or by the respondent's participation in the proceeding.

Eff. January 1, 1995. Revised: January 1, 1996; July 1, 2001.  
Source: TRP 555.1 (substantially revised).

#### **RULE 204. INTERLOCUTORY REVIEW OF ORDERS DENYING OR GRANTING RELIEF FROM DEFAULT**

An order on a motion to vacate a default may be reviewed pursuant to rule 300.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: New.

#### **RULE 205. DURATION AND TERMINATION OF ACTUAL SUSPENSION IN DEFAULT PROCEEDINGS**

- (a) Except as provided in paragraph (b), in a matter in which a member's default has been entered and the Court recommends that the member be placed on actual suspension, the Court's recommendation shall include each of the following: (1) a specific period of actual suspension; (2) a

period of stayed suspension, if appropriate; and (3) a statement that the member's actual suspension shall continue unless the Court grants a motion to terminate the actual suspension at the conclusion of the specific period of actual suspension or upon such later date ordered by the Court.

- (b) If the period of actual suspension imposed by the Supreme Court is two years or more or if the Supreme Court has ordered the member placed on actual suspension for a specific period of time and until the member demonstrates to the satisfaction of the State Bar Court his rehabilitation, present fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Conduct, the provisions of rules 630 through 641 shall apply in addition to this rule.
- (c) At any time after the Court files a decision pursuant to paragraph (a), the member may move the Court to terminate his or her actual suspension at the conclusion of any specified period of actual suspension imposed by the Supreme Court or upon the effective date of the Court's ruling on the motion, whichever is later. The motion shall be in writing and shall be accompanied by a declaration of the member, under penalty of perjury, stating all of the following:
  - (1) whether the Supreme Court has filed a final disciplinary order and, if so, the date the order imposing the actual suspension became or will become effective;
  - (2) the length of the specific period of actual suspension ordered by the Supreme Court or, if no final disciplinary order has been filed, the length of the specific period of actual suspension recommended by the State Bar Court;
  - (3) in order to assist the Court in ascertaining any appropriate probation conditions to be imposed, the reasons

for the member's failure to participate in the underlying proceeding for which his or her default was entered; provided, however, that such reasons need not be sufficient for vacating the member's default;

- (4) whether the member is willing to fully comply with such probation conditions as are reasonably related to the proceeding, and are agreed upon by the parties or are imposed by the Court as a condition for the termination of the member's actual suspension;
  - (5) if the Supreme Court has filed a final disciplinary order and the period of actual suspension is ninety (90) days or more, that the member has complied with the requirements of rule 955, California Rules of Court; and
  - (6) if the period of actual suspension recommended by the State Bar Court is ninety (90) days or more, and the Supreme Court has not filed a final disciplinary order, that the member will comply with the requirements of rule 955, California Rules of Court.
- (d) Within fifteen (15) days of service of the member's motion pursuant to paragraph (c), the Office of the Chief Trial Counsel may file a response.
- (e) In the Court's discretion, the Court may hold a hearing on the member's motion to terminate his or her actual suspension.
- (f) If the member has complied with the provisions of paragraph (c) of this rule and has agreed to fully comply with such standard or other probation conditions which are agreed upon by the parties or which the Court may impose, there shall be a presumption in favor of granting the motion to terminate the member's actual suspension at the conclusion of the specified period of actual suspension imposed by the Supreme Court. If the Court denies the motion, the Court shall clearly state the reason(s) for such denial.

(g) If the Court grants the motion to terminate the member's actual suspension, the Court may place the member on probation for a specified period of time and may impose such conditions of probation as the Court deems necessary or appropriate.

(h) This rule shall not preclude a member from moving to vacate a default pursuant to rule 203.

(i) The provisions of this rule shall apply to all proceedings in which the notice of disciplinary charges or other initial pleading is filed on or after March 15, 1999.

Eff. March 15, 1999.  
Source: New

#### **RULE 206. INTERLOCUTORY REVIEW OF ORDERS DENYING OR GRANTING MOTION PURSUANT TO RULE 205**

An order on a motion pursuant to rule 205 may be reviewed for abuse of discretion or error of law under rule 300.

Eff. March 15, 1999.  
Source: New

#### **RULE 210. OBLIGATION TO APPEAR AT TRIAL**

The respondent has an obligation to appear at trial unless default has been entered and has not been vacated. The respondent may appear through counsel rather than in person, unless the respondent is properly served with a trial subpoena or notice to appear at trial.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: New (but see TRP 553).

#### **RULE 211. PRETRIAL STATEMENTS AND PRETRIAL CONFERENCES**

(a) Unless otherwise ordered, or provided by stipulation of the parties approved by the Court, the parties shall file a joint pretrial statement, or if after a good faith attempt preparation of a joint statement is not feasible, serve and file separate pretrial statements.

(b) Pretrial statements shall be filed and served no less than twenty (20) days prior to the



pretrial conference, or as ordered by the Court.

- (c) Unless otherwise ordered, objections to any portion of a pretrial statement shall be made within ten (10) days of service of the pretrial statement.
- (d) Pretrial conferences shall not be held more than forty-five (45) days before the scheduled commencement of trial.
- (e) At the pretrial conference, the Court shall rule on any objections to the pretrial statements and may order the pretrial statements amended or supplemented.
- (f) Failure to file a pretrial statement in compliance with this rule may constitute grounds for such orders as the Court deems proper, including but not limited to the exclusion of evidence or witnesses.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: New (but see rules 1222-1223, Provisional Rules of Practice).

#### **RULE 212. NOTICE OF TRIAL**

- (a) Notice of the trial date shall be served upon the parties by the Clerk not less than thirty (30) days before the trial date, unless the parties agree to shorter notice.
- (b) If a trial date is rescheduled, at least twenty (20) days notice of the new date shall be given to the parties, orally or by mail, unless the parties have agreed to shorter notice.

Eff. January 1, 1995.  
Source: TRP 554 (substantially revised).

#### **RULE 213. STATE BAR'S BURDEN OF PROOF**

In disciplinary matters, the State Bar has the burden to prove culpability by clear and convincing evidence.

Eff. January 1, 1995.  
Source: TRP 402 (substantially revised).

#### **RULE 214. RULES OF EVIDENCE**

Except as otherwise provided in rules governing specific types of proceedings or hearings, and subject to the provisions of the State Bar Act and relevant decisions of the Supreme Court and the State Bar Court, the Evidence Code, as applied in civil cases, shall be applicable in State Bar Court proceedings. The procedure for producing evidence in civil cases in courts of record shall apply except as otherwise provided by these rules. However, no error in admitting or excluding evidence shall invalidate a finding of fact, decision or determination, unless the error resulted in a denial of a fair hearing.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: TRP 556 (substantially revised).

#### **RULE 215. EVIDENCE OF CLIENT SECURITY FUND PROCEEDINGS**

- (a) The fact that an application for reimbursement from the Client Security Fund has been approved or denied, in whole or in part, is inadmissible in a discipline proceeding involving the same member except:
  - (1) to prove the amount that was authorized as reimbursement after culpability has been found;
  - (2) to impeach the applicant for reimbursement, the complaining witness or a party who is the subject of the State Bar Court proceeding; or
  - (3) for any purpose when a party who is the subject of the State Bar Court proceeding has already been disciplined for the same action that gave rise to the Client Security Fund application and the decision to discipline the party has become final.
- (b) If evidence of payment of a Client Security Fund claim is introduced, evidence of reimbursement thereof shall also be admissible.

Eff. January 1, 1995.  
Source: TRP 570 (substantially revised).



**RULE 216. PRIOR RECORD OF DISCIPLINE**

- (a) A prior record of discipline consists of an authenticated copy of all charges, stipulations, findings and decisions (whether or not final) reflecting or recommending imposition of discipline on a party who is presently the subject of a State Bar Court proceeding. A prior record of discipline may include records from any jurisdiction stated in Business and Professions Code section 6049.1. A prior record of discipline includes recommended discipline that has not yet been approved by the court of last resort in the jurisdiction, and excludes the following dispositions if ordered in California or the equivalent if ordered elsewhere: suspension for non-payment of State Bar fees, inactive enrollment, interim suspension after conviction of crime, admonition, and agreements in lieu of discipline. In the event that part or all of the record evidencing a prior record of discipline is lost or destroyed, the record may be established by clear and convincing evidence.
- (b) A record, or the existence of a record, of prior discipline is inadmissible until a finding of culpability is made, unless it tends to prove a fact in issue in determining culpability.
- (c) A record of prior discipline is not made inadmissible by the fact that the discipline has been recommended but has not yet been imposed. If a record of prior discipline which is not yet final is admitted, the Court shall specify the disposition:
- (1) If the non-final prior discipline recommendation is adopted; and
  - (2) If the non-final prior discipline recommendation is dismissed or modified.

Eff. January 1, 1995.

Source: Paragraphs (a), (d): TRP 571 (substantially revised); see also TRP 572; paragraph (b): rules 1261-1262, Provisional Rules of Practice; paragraph (c): TRP 571; rule 1260, Provisional Rules of Practice.

**RULE 217. ADMISSIBILITY OF COMPLAINTS**

Evidence of State Bar records of complaints or records of unproven charges against the respon-

dent is inadmissible on behalf of the State Bar. If the respondent introduces evidence that no complaints or charges have been made, then evidence of any complaints or charges is admissible in rebuttal. Evidence of the facts underlying a record of complaint or unproven charge may be admitted to prove a fact in issue.

Eff. January 1, 1995. Revised: January 1, 1996.

Source: TRP 573 (substantially revised).

**RULE 218. ALLEGED MISCONDUCT OF ANOTHER MEMBER**

If it appears to the Court during a proceeding that there is probable cause to believe that another member has committed acts of misconduct, the proceeding that is already before the Court shall continue without abatement. After the decision in the proceeding is filed, the Court may refer the matter with regard to the other member to the Office of the Chief Trial Counsel.

Eff. January 1, 1995. Revised: January 1, 1996.

Source: TRP 574 (substantially revised).

**RULE 219. FAILURE TO MEET BURDEN OF PROOF**

- (a) During a trial, after the party with the burden of proof has rested, and before the proceeding is taken under submission by the Court, an opposing party may make an oral or written motion for a determination that the party with the burden of proof has failed to meet that burden, or the Court may indicate on the record that the Court is considering making such a determination on the Court's own motion, and afford the parties an opportunity for argument on the issue. If the allegations are severable, the Court may dismiss some but not all of them.
- (b) The Court shall consider all of the evidence introduced, weigh the evidence and make determinations of credibility.
- (c) If a party makes a motion under this rule and the motion is denied, that party may offer evidence without having reserved the right to do so and to the same extent as if the motion had not been made.

- (d) If a motion under this rule is granted, the Court's decision shall include findings of fact and conclusions of law.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: New (but see TRP 411).

## **RULE 220. SUBMISSION AND DECISION**

- (a) When the matter has been submitted, the Court shall take the matter under submission. Thereafter, the Court shall cause the Clerk to file and serve the decision. The Court shall not assign the duty of preparation of the decision, in whole or in part, to any party or any party's counsel. The decision shall be the final decision of the Court unless a timely request for review under rule 301 or 308 or post-trial motion under rules 221-224 is filed with the Clerk, or unless the decision is modified on the Court's own motion. Corrections of typographical errors or insubstantial changes not affecting the merits shall not constitute a modified decision under this rule.
- (b) The Court shall file its decision within ninety (90) days of taking the matter under submission, unless a shorter period for filing the decision in an expedited proceeding is required by statute, by Supreme Court rule, or by these rules.
- (c) If the Court recommends disbarment, it shall also include in its decision an order that the respondent be enrolled as an inactive member pursuant to Business and Professions Code 6007, subdivision (c)(4). The order of inactive enrollment shall be effective upon personal service or three (3) days after service by mail, whichever is earlier, unless otherwise ordered by the Court.
- (d) By March 1 of each year, the State Bar Court shall prepare and submit to the Chief Justice an annual report describing the compliance of each State Bar Court hearing judge with the requirements of paragraph (b) during the preceding calendar year.

- (e) Paragraphs (b) and (d) shall apply to all proceedings which are taken under submission for decision on or after February 1, 1999.

Eff. January 1, 1995. Revised: January 1, 1996; January 1, 1997; February 1, 1999.  
Source: New (but see TRP 411).

## **RULE 221. POST-TRIAL MOTIONS IN THE HEARING DEPARTMENT**

- (a) Post-trial motions shall be governed by the rules governing motions generally, as set forth in rule 105, except that all post-trial motions shall be made in writing, and the opposing party shall file and serve a written response within fifteen (15) days of service of the motion.
- (b) If a post-trial motion is filed after service of the Hearing Department's decision:
- (1) The time to seek review shall commence upon the service of the Hearing Department's ruling on the post-trial motion, and
  - (2) Any request for review filed prior to the Hearing Department's ruling on any post-trial motion shall be deemed vacated.

Eff. January 1, 1995.  
Source: New (but see TRP 562).

## **RULE 222. MOTION TO REOPEN RECORD**

- (a) A party may make a motion in the Hearing Department to reopen the record in the proceeding to present additional evidence at any time prior to the expiration of the time for requesting review by the Review Department.
- (b) A motion to reopen the record shall be accompanied by one or more declarations stating the substance of any new evidence which the moving party desires to present and showing:
- (1) that the evidence is newly discovered and could not with reasonable diligence have been discovered and produced earlier;

- (2) that the evidence is not merely cumulative and is the best available evidence on the issue, and
- (3) that consideration of the evidence would probably lead to a different result.

Eff. January 1, 1995.

Source: TRP 562 (substantially revised).

#### **RULE 223. MOTION FOR NEW TRIAL**

- (a) Within fifteen (15) days after service of the decision in a proceeding, any party may make a motion in the Hearing Department for a new trial.
- (b) A motion for a new trial shall be accompanied by one or more declarations setting forth the facts which the moving party contends justify a new trial, pursuant to the standards for granting a motion for a new trial in a civil matter in the courts of this state.

Eff. January 1, 1995.

Source: TRP 562 (substantially revised).

#### **RULE 224. MOTION FOR RECONSIDERATION**

- (a) Within fifteen (15) days after service of the decision in a proceeding, any party may make a motion in the Hearing Department for reconsideration.
- (b) The grounds for a motion for reconsideration are (1) new or different facts, circumstances or law, as that ground is applied in civil matters under Code of Civil Procedure section 1008; and/or (2) the order or decision contains one or more errors of fact and/or law based on the evidence already before the Court.

Eff. January 1, 1995. Revised: July 1, 2001.

Source: TRP 562 (substantially revised).

### **DIVISION VI. DISPOSITIONS AND COSTS**

#### **RULE 250. TRANSMITTAL OF DISCIPLINE RECOMMENDATIONS TO SUPREME COURT**

Unless otherwise ordered by the Court, a recommendation of suspension or disbarment, and the accompanying record, shall be transmitted to the Supreme Court after:

- (a) The disciplinary recommendation of the State Bar Court has become final and
- (b) All applicable cost certificates have been filed, or an additional thirty (30) days has expired, whichever is earlier.

Eff. January 1, 1995. Revised: January 1, 1996.

Source: New.

#### **RULE 251. WAIVER OF REVIEW BY REVIEW DEPARTMENT**

The parties may file a stipulation waiving review by the Review Department and requesting that the disciplinary recommendation be transmitted to the Supreme Court without delay. The stipulation shall be accompanied by a certificate of costs from the Office of the Chief Trial Counsel, if applicable. Upon filing of a stipulation under this rule, the Clerk shall transmit the record to the Supreme Court on an expedited basis.

Eff. January 1, 1995. Revised: January 1, 1996.

Source: New (but see TRP 575).

#### **RULE 260. TYPES OF RESOLUTION; PROCEDURE; REVIEW**

- (a) Other than resolution by decision or stipulated disposition, a proceeding may be resolved by: (1) dismissal without prejudice, (2) dismissal with prejudice, (3) an order terminating the proceeding or (4) issuance of an admonition.
- (b) Resolution of a proceeding may be proposed by: (1) a motion by any party, (2) a motion made jointly by two or more parties or (3) the Court on its own motion, in which case the Court shall first afford the

parties notice and an opportunity to object. An agreed-upon resolution of a proceeding by dismissal, admonition, or termination shall be proposed by joint motion rather than by stipulation; provided, however, that a stipulation under rule 132 or 133 may provide for the dismissal with prejudice of one or more charges brought in the proceeding in which the stipulation is filed. A joint motion for an admonition shall comply with rule 264(e).

- (c) Resolution of a proceeding requires a court order even if proposed by an unopposed motion or by a joint motion. The Court, in the interests of justice, may decline to issue an order resolving a proceeding even if the order is sought by joint or unopposed motion.
- (d) An order granting a motion for a resolution under rules 260-264 which resolves the proceeding in its entirety shall be reviewable by the review department upon the filing of a request for review under rule 301 or 308 by any party who opposed the motion. An order granting a motion for a resolution under rules 260-264 which does not resolve the proceeding in its entirety, or an order denying a motion for a resolution under rules 260-264, shall be reviewable pursuant to rule 300.

Eff. January 1, 1994. Revised: January 1, 1996.  
Source: New.

#### **RULE 261. DISMISSAL WITH OR WITHOUT PREJUDICE; EFFECT**

- (a) All orders dismissing a proceeding in whole or in part shall specify whether such dismissal is with or without prejudice.
- (b) A dismissal with prejudice bars the State Bar from reopening the proceeding and from commencing a new proceeding based on the same transaction or occurrence. An order dismissing a proceeding with prejudice shall state the basis therefor.
- (c) After a dismissal without prejudice, the dismissed proceeding may be reopened by

the filing of an amended notice of disciplinary charges or by appropriate motion, or a new proceeding may be commenced based on the same transaction or occurrence. Leave of the Court must be obtained, based on good cause shown, before a proceeding may be reopened, or a new proceeding commenced based on the same transaction or occurrence, if more than two (2) years have elapsed since the effective date of the dismissal, or, if the dismissal was based on an agreement in lieu of discipline, if the term of such agreement has expired. If a new proceeding is commenced based wholly or partially on the same transaction or occurrence as a proceeding previously dismissed without prejudice, the notice of disciplinary charges in the new proceeding shall identify the dismissed proceeding and shall state that the new proceeding is based (in whole or in part, as appropriate) on the same transaction or occurrence as the dismissed proceeding.

Eff. January 1, 1995.  
Source: New.

#### **RULE 262. GROUNDS FOR DISMISSAL**

- (a) Voluntary Dismissal for Insufficiency of Evidence. The party initiating a proceeding may move for voluntary dismissal of the proceeding, in whole or in part, based on unavailability or insufficiency of evidence. A dismissal under this paragraph shall be without prejudice unless the Court determines, in the exercise of discretion, that the proceeding should be dismissed with prejudice.
- (b) Defective Service. A proceeding may be dismissed due to a defect in the manner of service of the initial pleading. Such a dismissal shall be without prejudice, and may take the form of an order that the proceeding will be dismissed without prejudice if proof of proper service is not filed within a specified time. A motion to dismiss due to a defect in the manner of service of the initial pleading shall be made no later than



the date on which the moving party's response is to be filed or, if the moving party's default is entered, the expiration of the time to move for relief from default, or, if no response is provided for, no later than twenty (20) days after the date the allegedly defective service was made. Failure to file a timely motion under this paragraph shall preclude the party from a later assertion of the alleged defect in service as a ground for dismissal of the proceeding.

(c) Defective Initial Pleading.

- (1) A proceeding may be dismissed for failure of the initial pleading to state a legally sufficient basis to warrant the action proposed, or, in a disciplinary proceeding, for failure of the initial pleading to state a disciplinable offense or to give sufficient notice of the charges.
- (2) A motion to dismiss a disciplinary proceeding due to the failure of the initial pleading to give sufficient notice of the charges shall be made no later than the date on which the moving party's response is to be filed, or, if no response is provided for, no later than twenty (20) days after the service of the initial pleading. Failure to file a timely motion under this subparagraph shall preclude the party from a later assertion of the alleged inadequate notice of the charges as a ground for dismissal of the proceeding, but shall not preclude an assertion of inadequate notice for other purposes. A motion to dismiss for failure of the initial pleading to state a disciplinable offense may be made at any time prior to a finding of culpability.
- (3) A dismissal under this paragraph shall be without prejudice, and at least one opportunity shall be given to file an amended initial pleading. Unless otherwise ordered, any amended initial pleading shall be filed within twenty (20) days of service of the order dismiss-

ing the proceeding or service of the Review Department decision in the matter, whichever is later. When a proceeding has previously been dismissed without prejudice based on a defect in the initial pleading, and the party has filed an amended initial pleading which does not cure the defects identified in connection with the previous dismissal, the Court shall have discretion to dismiss the proceeding with prejudice. A dismissal under this paragraph may be in the form of an order that the proceeding will be dismissed, with or without prejudice, as appropriate, if an amended initial pleading is not filed within a specified time.

- (d) Barred by Statute or Rule. A proceeding may be dismissed on the ground that it is barred by any applicable statute or rule.

(e) Furtherance of Justice.

- (1) The party initiating a proceeding may move to dismiss in the furtherance of justice. A dismissal under this paragraph shall be without prejudice unless the motion seeking dismissal shows good cause why the proceeding should be dismissed with prejudice.
- (2) The Court on its own motion, after the parties are afforded notice and an opportunity to object, may dismiss a proceeding with or without prejudice in the furtherance of justice. The reasons for the dismissal and the determination of whether the dismissal is with or without prejudice shall be set forth in a written order.
- (3) Prior to dismissing a proceeding on its own motion pursuant to paragraph (2) above, the Court shall issue an order to show cause notifying the parties of the Court's intent to dismiss the proceeding in the interests of justice and the proposed reasons for its dismissal. Within ten (10) days of service of the Court's order to show cause, the par-



ties may file a response to the Court's order, which may include declarations, an offer of proof and points and authorities either in support of or in opposition to the Court's intended action. The State Bar may include, in its response, information concerning prior investigation matters which were closed with warning letters, resource letters, agreements in lieu of disciplinary prosecution, other agreements resolving investigations, and impositions of discipline including private reprovations and/or any other evidence of prior conduct tending to establish a common plan, scheme or device.

- (f) **Agreement in Lieu of Discipline.** A disciplinary proceeding may be voluntarily dismissed because the State Bar and the respondent have entered into an agreement in lieu of discipline pursuant to Business and Professions Code section 6092.5(i). A dismissal under this paragraph shall be without prejudice, provided, however, that successful completion of the agreement in lieu of discipline shall bar subsequent prosecution of the respondent based on the misconduct charged in the dismissed proceeding.
- (g) **Discovery Sanction.** Dismissal may be ordered as a discovery sanction. A dismissal under this paragraph shall be with prejudice unless the Court orders otherwise for good cause shown.
- (h) **Future Consolidation.** Upon motion of the State Bar, a proceeding may be dismissed in order to permit it to be refiled at a later date and consolidated with an anticipated proceeding involving the same member that is not yet ready to be commenced. A dismissal under this paragraph shall be without prejudice. No dismissal under this paragraph shall be entered on the Court's own motion.
- (i) **Resignation or Disbarment.** If the member who is the subject of a proceeding resigns or is disbarred during the pendency of the

proceeding, the Court shall take judicial notice of the Supreme Court's order accepting the resignation or ordering the disbarment, and shall dismiss the proceeding. Such dismissal shall be without prejudice to further proceedings in the event of a petition for reinstatement.

Eff. January 1, 1995. Revised: January 1, 1996; September 1, 2002.

Source: New (but see TRP 410, 411, 554.1).

#### **RULE 263. TERMINATION DUE TO DEATH**

When a member, petitioner, or applicant who is the subject of a proceeding dies during the pendency of the proceeding, any party or its counsel, promptly upon learning of the death, shall file a motion for termination of the proceeding, accompanied by a certified copy of the death certificate, or other sufficient proof of death if a death certificate cannot be obtained after diligent effort. Upon receipt of such motion, or on the Court's own motion on receipt of sufficient proof of death and after notice to the deputy trial counsel and the deceased party's counsel, if any, the Court shall file an order terminating the proceeding.

Eff. January 1, 1995.

Source: New.

#### **RULE 264. ADMONITION**

- (a) When the subject matter of a disciplinary proceeding pending in the State Bar Court does not involve a matter which is, or probably is, a Client Security Fund matter, or a serious offense as defined in paragraph (b) of this rule, the Court may resolve the matter by an admonition to the respondent, if the Court concludes that (1) the violation or violations were not intentional or occurred under mitigating circumstances, and (2) no significant harm resulted.
- (b) As used in this rule, "serious offense" means conduct involving dishonesty, moral turpitude, or corruption, including conduct or acts constituting bribery, forgery, perjury, extortion, obstruction of justice, burglary or offenses related thereto,

intentional fraud and intentional breach of a fiduciary relationship.

- (c) The fact of the admonition, and/or a copy thereof, shall be communicated to the complainant, if any, and to the deputy trial counsel, but otherwise shall not be actively publicized by the State Bar or the State Bar Court. However, unless otherwise ordered, the file in a public proceeding shall remain public even if the proceeding is resolved by the issuance of an admonition.
- (d) The giving of an admonition does not constitute imposition of discipline upon the respondent.
- (e) Any party may move for the issuance of an admonition under this rule, or the parties may make a joint motion. If the motion is made jointly, it shall be accompanied by a stipulation conforming to the requirements of rule 133, except that subparagraph (b)(1) shall not apply.
- (f) If within two years after the effective date of a decision or order resolving a proceeding by issuing an admonition to the respondent, another disciplinary proceeding is initiated against that respondent based on other alleged misconduct, the proceeding resolved by admonition shall be reopened upon motion of the Office of the Chief Trial Counsel filed within thirty (30) days after the initiation of the second proceeding. All applicable time limitations shall be tolled during the period between the issuance of the admonition and the filing of the order granting the motion to reopen.

Eff. January 1, 1995.  
Source: TRP 415 (substantially revised).

#### **RULE 270. PUBLIC AND PRIVATE REPROVALS**

- (a) A reproof shall be set forth in the Court's decision or order approving stipulation, and shall be effective when the decision or order is final. The decision or order shall specify whether the reproof is public or private.
- (b) A public reproof imposed on a respondent is publicly available as part of the respondent's

official State Bar membership records and is disclosed in response to public inquiries. The record of the proceeding in which the public reproof was imposed remains public.

- (c) A private reproof imposed on a respondent after the initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page. The complainant shall be advised of the imposition of any private reproof.
- (d) If a private reproof was imposed as the result of a stipulation approved by the Court prior to the initiation of a State Bar Court proceeding, then the private reproof is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under these rules.

Eff. January 1, 1995. Revised: July 1, 2000.  
Source: TRP 615 (substantially revised).

#### **RULE 271. REPROVALS WITH CONDITIONS**

Conditions effective for a reasonable time may be attached to reprovals in the manner authorized by California Rules of Court, rule 956. Motions to modify conditions attached to reprovals shall be governed by rules 550-554 (modification or early termination of probation).

Eff. January 1, 1995.  
Source: TRP 616; TRP 618 (substantially revised).

#### **RULE 280. CERTIFICATION AND ASSESSMENT OF COSTS**

Pursuant to Business and Professions Code section 6086.10:

- (a) Respondents ordered publicly reproved shall be ordered to pay the costs of the disciplin-

any proceeding based upon cost certificates of the Office of the Chief Trial Counsel and the State Bar Court.

- (b) The record of the State Bar proceedings transmitted to the Supreme Court with a record of suspension, disbarment or acceptance of a member's resignation with disciplinary charges pending, shall be accompanied by the cost certificates of the Office of the Chief Trial Counsel and the State Bar Court.
- (c) Costs shall be awarded to the State Bar with respect to the entire proceeding if the State Bar has prevailed as to at least one of the charges alleged in the proceeding. In matters which have been consolidated for purposes of hearing or decision, costs shall be awarded to the State Bar with respect to each of the consolidated matters, if the State Bar has prevailed as to at least one of the consolidated matters, unless good cause is established to order otherwise.
- (d) If the Court orders that disciplinary costs be paid in installment payments, the order imposing costs shall require the payments to be made on an annual basis, designating the amount of each annual installment. Each installment payment shall be added to and become a part of the annual membership fees of the member.
- (e) This rule does not limit the authority of the State Bar Court to grant relief from costs pursuant to Rule 282 and Business and Professions Code section 6086.10(c).

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: TRP 460, 461 (substantially revised).

**RULE 282. PROCEDURE FOR RELIEF FROM OR EXTENSION OF TIME TO COMPLY WITH ORDER ASSESSING COSTS AGAINST DISCIPLINED OR RESIGNING RESPONDENT**

- (a) A respondent may challenge the propriety under Business and Professions Code section 6086.10(b) of the inclusion of items in the certificate of costs, and/or may challenge the computation of properly included costs, pro-

vided, however, that this rule does not authorize a challenge to the State Bar's determination of "reasonable costs" under Business and Professions Code section 6086.10(b)(3). Upon grounds of hardship, special circumstances or other good cause, a respondent assessed costs under rule 280 may move for relief, in whole or in part, from the order assessing those costs or may move for an extension of time to pay those costs.

- (b) (1) A motion under this rule shall be filed no earlier than the effective date of a public reproof by the State Bar Court or the filing of a Supreme Court order assessing costs, and no later than thirty (30) days thereafter, unless the motion is based in whole or in part on financial hardship.
- (2) A motion under this rule based in whole or in part on financial hardship must be filed as soon as practicable after the circumstances giving rise to the financial hardship become known, but no later than the following:
  - (i) if the respondent has not been actually suspended, thirty (30) days prior to the date set by the Board of Governors as the effective date for suspension of those members who have failed to pay annual membership fees, penalties and costs for the calendar year in which the member's costs are due, or
  - (ii) if the respondent has been actually suspended, prior to the earliest date that the respondent's actual suspension can be terminated.

The motion shall be accompanied by a completed financial statement of the respondent in the form prescribed by the Court.

- (3) The time within which a member must pay disciplinary costs due pursuant to Business and Professions Code section 6086.10(a) shall not be extended for a

total of more than five (5) years from the original date upon which those costs were assessed.

- (4) After the expiration of the time provided in paragraphs (b)(1) or (b)(2) of this rule or the suspension of the member by the Supreme Court for failure to pay disciplinary costs, whichever is earlier, relief from the payment of such costs may be granted only by the Board of Governors pursuant to Business and Professions Code section 6141.1.

- (5) The January 1, 1997, amendments to Business and Professions Code section 6140.7 shall apply only to costs assessments arising from disciplinary recommendations filed in the State Bar Court on or after January 1, 1997. The provisions of paragraph (b) of this rule shall apply such costs assessments. The January 1, 1995, and October 1, 1995, versions of paragraph (b) of this rule shall apply to all costs assessments arising from disciplinary recommendations filed in the State Bar Court prior to January 1, 1997.

Eff. January 1, 1995. Revised: October 1, 1995; January 1, 1997.

Source: TRP 462 (substantially revised).

**RULE 283. AWARD OF COSTS TO  
RESPONDENT EXONERATED OF  
ALL CHARGES FOLLOWING TRIAL**

- (a) A respondent in a disciplinary proceeding who is exonerated of all charges following trial in the Hearing Department, decision of the Review Department, if review was sought, and decision or order of the Supreme Court, if a petition for writ of review was filed, may move for reimbursement of costs as authorized by Business and Professions Code section 6086.10(d).
- (b) Only the following items shall be allowable as reasonable expenses of preparation for the hearing under Business and Professions Code section 6086.10(d):

- (1) Taking, videotaping and transcribing necessary depositions, including an original and one copy of those taken by the respondent and one copy of depositions taken by the State Bar, and travel expenses to attend depositions;
  - (2) Service of process by a public officer, registered process server, or other means, as provided in Code of Civil Procedure section 1033.5(a)(4);
  - (3) Ordinary witness fees, other than expert witness fees, pursuant to Government Code section 68093;
  - (4) Models and blowups of exhibits and photocopies of exhibits if, in the discretion of the Court, they were reasonably helpful to aid the Court as the trier of fact;
  - (5) Transcripts of Court proceedings ordered by the Court;
  - (6) Copies of State Bar Court Clerk's audiotape recordings of the proceeding in which the hearing is being held;
  - (7) Investigation expenses incurred after filing of the notice of disciplinary charges in preparing the case for hearing if, in the discretion of the Court, such expenses were reasonably necessary;
  - (8) The reasonable expenses of computerized legal research if, in the discretion of the Court, such computerized research was reasonably required by the issues involved in the hearing and other less expensive means of research were not reasonably available;
  - (9) The actual expense incurred in preparation for the hearing for (A) photocopying (except exhibits), (B) postage, and (C) telephone and facsimile transmission charges, provided that expenses shall not exceed \$150.00 for the entire proceeding.
- (c) "Exoneration of all charges" within the meaning of Business and Professions Code



section 6086.10(d) means a dismissal with prejudice of the entire proceeding following the Court's finding that the respondent is not culpable of the charged misconduct. A respondent is not "exonerated of all charges" within the meaning of section 6086.10(d) if the Court imposes an admonition or concludes that the respondent is culpable of charged misconduct even though no discipline is imposed or recommended.

- (d) A motion for reimbursement of costs under this rule shall be filed no earlier than the date of service of the final ruling exonerating the respondent of all charges following the conclusion of all proceedings in the matter, including Supreme Court review if any, and no later than thirty (30) days thereafter. The motion shall be accompanied by appropriate documentation of the costs for which reimbursement is requested. The respondent shall not be entitled to reimbursement of costs incurred in seeking reimbursement under this rule.
- (e) Within twenty (20) days after service of a motion under this rule, a response thereto may be filed.
- (f) The motion shall be heard and decided by the hearing judge who was assigned to the underlying proceeding. If there is no such judge or that judge is unavailable or disqualified, the motion shall be assigned to another hearing judge. A hearing may be held if the Court determines it necessary to resolve any substantial question of fact, or upon written request of any party.
- (g) The judge shall decide the motion by written order. The order may grant or deny the motion in whole or in part. The judge shall determine the reasonable expenses to be reimbursed pursuant to Business and Professions Code section 6086.10(d).
- (h) Within fifteen (15) days after the service of the order on the motion, a party may file a petition for review under rule 300.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: TRP 463 (substantially revised).

#### **RULE 284. STIPULATING TO RELIEF FROM OR EXTENSION OF TIME TO PAY COSTS**

By written stipulation filed with the Court, the Chief Trial Counsel may relieve the respondent, in whole or in part, from the obligation to pay the costs of disciplinary proceedings, or may enter into an agreement extending the time to pay these costs, upon grounds of hardship, special circumstances or other good cause.

Eff. January 1, 1995.

Source: TRP 464 (substantially revised).

#### **RULE 290. MANDATORY REMEDIAL EDUCATION**

- (a) Except as provided by order of the Supreme Court, a member shall be required to satisfactorily complete the State Bar Ethics School in all dispositions or decisions involving the imposition of discipline, unless the member previously completed the course within the prior two years.
- (b) If a member resides in another jurisdiction and is unable to attend State Bar Ethics School, the member may seek authorization to attend a comparable remedial education course offered through a certified provider in the other jurisdiction by obtaining the prior approval of the Office of the Chief Trial Counsel and final approval of the State Bar Court.

Eff. August 26, 1995.

Source: New

### **DIVISION VII. REVIEW BY REVIEW DEPARTMENT AND POWER DELEGATED BY SUPREME COURT**

#### **RULE 300. PETITION FOR INTERLOCUTORY REVIEW AND FOR REVIEW OF SPECIFIED MATTERS**

- (a) Availability of Interlocutory Review and Review of Specified Matters. A party may petition for interlocutory review as provided in these Rules of Procedure with respect to significant issues that require in-

tervention of the Review Department prior to completion of proceedings in the Hearing Department and that are not readily remediable after trial. Review of other specified matters is also available under this rule as provided by these Rules of Procedure.

- (b) **Time for Filing Petition.** Any aggrieved party may petition the Review Department for review of an order within fifteen (15) days of the service of a written order by a judge of the Hearing Department, or of the making of an oral order on the record, whichever is later. If a different time for seeking review under this rule is specified elsewhere in these rules, that time shall control. The timely filing of a motion for reconsideration of the hearing judge's order shall extend the time within which a party may seek review under this rule until fifteen (15) days after service of the ruling on the motion for reconsideration.
- (c) **Contents of Petition.** Petitions pursuant to this rule shall be accompanied by:
  - (1) a supporting memorandum of points and authorities containing specific citations to the relevant portions of the record in the Hearing Department; and
  - (2) an appendix containing:
    - (A) a copy of the written order (or, if there is none, a copy of the audiotaped record of the hearing at which the oral order was made) which the party seeks to have reviewed, and
    - (B) copies of all pleadings filed with the Hearing Department in support of or in opposition to the issuance of such order.
- (d) **Filing and Service.** The petitioner shall file the original and three copies of the petition and all supporting pleadings (including any required audiotape) with the Clerk. The petitioner shall serve copies of the petition and all supporting pleadings pursuant to the rule for service

of subsequent pleadings (rule 61), on all other parties and upon the hearing judge who issued the order from which interlocutory review is sought.

- (e) **Response.** Unless otherwise ordered by the Review Department, no response to a petition for interlocutory review is required unless the Review Department grants review. If review is granted by the Review Department, the responding party may file and serve a response within ten (10) days of the service of the order granting review.
- (f) **Filing and Service of Subsequent Pleadings.** Following the filing of the petition for interlocutory review, any party filing a pleading with the Clerk, including the response to the petition pursuant to paragraph (e) of this rule, shall file the original and three copies of such pleading with the Clerk and shall serve copies of such on all parties pursuant to rule 61 and upon the hearing judge who issued the order from interlocutory review is sought.
- (g) **Citations to Record; Supplemental Appendix.** All statements of fact in support of or in response to the petition must be accompanied by appropriate citation to the appended record. If material pertaining to the challenged order that is part of the Hearing Department record was omitted from the appendix prepared by the petitioning party, an opposing party may file and serve, together with the response, a supplemental appendix containing the omitted material.
- (h) **Motion for Stay**
  - (1) A party who intends to file a petition under this rule, and who seeks to stay proceedings in the Hearing Department pending disposition of the petition, must make a motion to the hearing judge for a stay. The motion must be made at the time of filing the petition, may be made orally on the record or in writing upon shortened notice pursuant to rule 64, and shall be ruled upon on an expedited basis.

- (2) If the motion for stay is denied by the hearing judge, the petitioning party may move the Review Department to stay further Hearing Department proceedings in the matter until the Review Department files a ruling on the petition. If the petitioning party moves for a stay by the Review Department:
- (A) The motion for stay shall be filed within five (5) days after the petitioning party receives notice that the hearing judge has denied the stay, or concurrently with the filing of the petition, whichever is later.
  - (B) The motion shall state that a motion for a stay was previously made to and denied by the hearing judge, and shall attach a copy of the hearing judge's ruling on the motion for stay, or if there is no written ruling, a copy of the audiotape of the hearing at which the oral order was made, together with copies of any pleadings filed in support of and/or in opposition to the motion.
  - (C) The Presiding Judge may issue a temporary stay pending an opportunity for the Review Department to consider the motion for stay.
- (i) Summary Denial. The petition may be summarily denied if it does not meet the criteria set forth in subdivision (a) of this rule or if it appears to the Review Department that the petition does not demonstrate clearly that the hearing judge's order was erroneous under the applicable standard of review.
  - (j) No Oral Argument. In proceedings in which the Review Department has granted review, the issues raised by the petition and any response thereto will be decided by the Review Department without oral argument unless the Review Department orders otherwise.
  - (k) Standard of Review. Except as otherwise specified in a rule authorizing the filing of a petition under this rule, the standard of review in proceedings under this rule in which review has been granted shall be abuse of discretion or error of law.
  - (l) Decision. In those proceedings in which review has been granted, the Review Department may deny the relief sought in the petition, or may grant the relief in whole or in part. If the requested relief is granted in whole or in part, it may be granted subject to appropriate conditions imposed upon the petitioning party. If a quorum of the Review Department is not available to rule on the petition in time to provide the petitioning party with meaningful relief, the Presiding Judge may act for the Review Department on any petition under this rule, subject to reconsideration by the Review Department in bank on its own motion or on motion of any party.

Eff. January 1, 1998. Revised: January 1, 1995.

Source: New.

#### **RULE 301. REQUEST FOR REVIEW**

- (a) Unless expressly provided otherwise in the rules governing a particular type of proceeding, all decisions, orders, or rulings by hearing judges which fully dispose of an entire proceeding are reviewable by the Review Department at the request of any party under this rule. Any party seeking review of such a decision shall serve and file with the Clerk a request for review which shall:
  - (1) Be filed within thirty (30) days after service of the hearing judge's decision if no post-trial motion has been filed by any party; or be filed within thirty (30) days after service of the hearing judge's ruling on a post-trial motion; and
  - (2) Unless otherwise ordered by the Presiding Judge, certify that a trial transcript has been ordered and appropriate arrangements have been made for payment. Unless otherwise ordered by the Presiding Judge, upon the failure of

the party requesting review to timely order a transcript and/or to make timely payment of the required transcript deposit, the Clerk shall notify the party filing the request for review that the request for review will be dismissed unless, within fifteen (15) days after service of the Clerk's notice, the party tenders the required deposit and shows good cause why it was not timely paid, or shows good cause why other arrangements satisfactory to the Court have not been made.

- (b) If any party to a proceeding files a request for review under paragraph (a) of this rule, any opposing party may thereafter file a request for review within ten (10) days after the service of the first party's request for review, or within the time permitted by subparagraph (a)(1) of this rule, whichever is later.
- (c) If more than one party requests review:
  - (1) The cost of the transcript shall be divided equally among the parties requesting review, and
  - (2) Each party requesting review shall file an appellant's brief as provided in rule 302; each such party shall file a responsive brief as provided in rule 303(a); and each such party may file a rebuttal brief as provided in rule 303(b).
- (d) The filing of a post-trial motion as to a decision shall vacate any request for review of that decision filed under this rule. The time to request review after a post-trial motion shall commence with the service of the hearing judge's ruling on the motion.
- (e) Except as expressly permitted by these rules, no action of a hearing judge shall be reviewable by the Review Department until after the entry of a decision or order by the hearing judge fully disposing of the entire proceeding.

Eff. January 1, 1995.

Source: TRP 450(a) (substantially revised).

#### **RULE 302. APPELLANT'S BRIEF**

- (a) Within forty-five (45) days after service of the request for review or service by the Clerk of the trial transcript, whichever occurs later, the appellant shall file with the Clerk and serve an opening brief. The brief shall include references to the record to establish all issues of fact in support of the points raised by the appellant.
- (b) If the appellant's opening brief is not timely filed, the Clerk shall notify the parties that if the brief is not filed within fifteen (15) days from service of the Clerk's notice, then unless otherwise ordered by the Presiding Judge, the request for review will be dismissed with prejudice, and if no other party requested review, the decision of the hearing judge will become the final decision of the State Bar Court.

Eff. January 1, 1995.

Source: TRP 450(b) (substantially revised).

#### **RULE 303. SUBSEQUENT BRIEFS**

- (a) Within thirty (30) days after service of the appellant's brief, the appellee shall file with the Clerk and serve a responsive brief which shall meet the same formal requirements as the appellant's brief. If the appellee's brief is not timely filed, the Clerk shall notify the parties that if the brief is not filed within fifteen (15) days from service of the Clerk's notice, then unless otherwise ordered by the Presiding Judge, the proceeding will be submitted on review without oral argument, and if oral argument is held at the request of the appellant or on the Court's motion, the appellee will be precluded from appearing.
- (b) Within fifteen (15) days after service of the appellee's brief, the appellant may file with the Clerk and serve a rebuttal brief, the body of which shall not exceed ten (10) pages in length. For good cause, the Presiding Judge may allow additional time for filing the rebuttal brief, and/or may permit the body of the brief to exceed ten (10) pages in length.

Eff. January 1, 1995.

Source: TRP 450(b) (substantially revised).



#### **RULE 304. ORAL ARGUMENT BEFORE REVIEW DEPARTMENT**

Except as otherwise provided in these rules, the Review Department shall give the parties an opportunity for oral argument. The parties may waive oral argument at any time, but not less than five (5) days prior to the date set for oral argument. Unless oral argument is waived or the parties agree to a shorter period of notice, written notice of the time and place of oral argument shall be served on the parties at least thirty (30) days prior to the oral argument.

Eff. January 1, 1995. Revised: February 1, 1999.  
Source: TRP 450(b) (substantially revised).

#### **RULE 305. ACTIONS BY REVIEW DEPARTMENT**

- (a) Upon review pursuant to rule 301 of decisions of rulings of the Hearing Department, the Review Department shall independently review the record and may adopt findings, conclusions and a decision or recommendation at variance with those of the hearing judge. The Review Department may remand a proceeding to the Hearing Department for a new trial on specified issues, for a trial de novo, or for other proceedings. Proceedings on remand shall be held before the same hearing judge unless the Review Department orders otherwise or that judge is unavailable. Findings of fact of the hearing judge resolving issues pertaining to credibility of witnesses shall be given great weight.
- (b) The Review Department may take action as to an issue whether or not that issue was raised in the request for review or briefs of any party. If the Review Department is considering taking action as to an issue not raised by any party, the Review Department shall advise the parties in writing of such issues prior to oral argument and any party may file a supplemental brief regarding such issues. If the Review Department does not advise the parties in advance of oral argument, supplemental post-trial briefs shall be permitted, or a rehearing

shall be ordered upon timely motion by any party under rule 309.

- (c) The Review Department shall decide matters before it in bank. Two (2) judges of the Review Department shall constitute a quorum. A majority vote of the judges of the Review Department present and voting shall be sufficient to take any action or arrive at any decision in any matter before that department.
- (d) The Review Department shall file its opinion within ninety (90) days of taking the matter under submission, unless a shorter period for filing the opinion in an expedited proceeding is required by statute, by Supreme Court rule, or by these rules.
- (e) In the event that one or more Review Department judges are disqualified or unavailable to serve in a matter before the department, the Presiding Judge may designate a hearing judge appointed by the Supreme Court pursuant to Business and Professions Code section 6079.1 to act in the place of the disqualified or unavailable Review Department judge, provided that the hearing judge so designated took no part in the consideration or decision of the matter in the Hearing Department. If the Presiding Judge is disqualified or unavailable to act under this provision, a Lawyer Review Judge shall act in place of the Presiding Judge, unless the Presiding Judge has designated another judge for this purpose.
- (f) In the event that the Review Department recommends disbarment, it shall also include in its opinion an order that the respondent be enrolled as an inactive member pursuant to Business and Professions Code section 6007, subdivision (c)(4). The order of inactive enrollment shall be effective upon personal service or three (3) days after service by mail, whichever is earlier, unless otherwise ordered by the Court.
- (g) By March 1 of each year, the State Bar Court shall prepare and submit to the Chief Justice an annual report describing the compliance of the Review Department

with the requirements of paragraph (d) during the preceding calendar year.

- (h) Paragraphs (d) and (f) of this rule shall apply to all proceedings which are taken under submission on or after February 1, 1999.

Eff. January 1, 1995. Revised: January 1, 1997; February 1, 1999.

Source: TRP 453 (substantially revised).

#### **RULE 306. ADDITIONAL EVIDENCE BEFORE REVIEW DEPARTMENT**

- (a) Except as provided by this rule or by order of the Review Department, the Review Department shall consider as evidence only that which was made a part of the record in the Hearing Department in the proceeding under review, or which was offered and excluded in the Hearing Department and which the Review Department determines should not have been excluded.
- (b) On its own motion or at the request of a party, the Review Department may take judicial notice of orders and decisions of the Supreme Court or the State Bar Court arising out of any State Bar Court proceeding involving the party who is the subject of the proceeding under review, whether or not such orders and decisions were introduced as evidence in the Hearing Department.
- (c) The Review Department may augment the record to admit other judicially noticeable facts or stipulated facts such as those bearing on restitution or rehabilitation occurring subsequent to the conclusion of evidentiary proceedings before the hearing judge.
- (d) Any party may move to augment the record, or in the alternative to remand the proceeding, to present evidence occurring subsequent to the conclusion of evidentiary proceedings before the hearing judge, such as evidence bearing on restitution or rehabilitation. Alternatively, any party may move to remand in order to file a motion to reopen the record pursuant to rule 222. Upon such motion, or on its own motion after notice to the parties, the Review Department may appoint a hear-

ing judge as a referee to receive evidence and make proposed additional findings of fact thereon.

- (e) (1) Any motion by a party, or stipulation by all parties, for augmentation or correction of the record on review shall be so identified and shall be filed and served as a separate pleading on the date the appellant's opening brief is due to be filed.
- (2) All other parties shall file and serve a response to the motion to augment or correct the record as a separate pleading on the date the appellee's brief is due to be filed. If a motion to augment or correct the record is filed after the filing of the appellant's opening brief, any response thereto must be filed and served within ten (10) days of the service of the motion.
- (3) The Review Department will grant requests for augmentation or correction of the record on review only if it determines that the original record is incomplete or incorrect, or as permitted by paragraphs (a) through (d) of this rule.

Eff. January 1, 1995.

Source: New (but see Provisional Rules of Practice, rule 1304).

#### **RULE 308. SUMMARY REVIEW PROGRAM**

- (a) The Review Department may summarily review matters raising limited issues on review which can be decided without necessitating a transcript of the entire record of State Bar hearings or the normal briefing schedule. Matters eligible for summary review include, but are not limited to, matters where no challenge has been made to the material findings of fact of the hearing judge and the issues on review are:
- (1) contentions that the facts support conclusions of law different from those reached by the hearing judge;
  - (2) disagreement as to the appropriate disposition or degree of discipline; and/or

- 
- (3) other questions of law.
  - (b) Unless the Review Department determines pursuant to paragraph (i) that a matter for which summary review has been requested is not appropriate for summary review, any issue or contention not raised by the parties in briefs filed pursuant to paragraph (f) shall be waived.
  - (c) The decision of the hearing judge shall be the final State Bar Court decision as to all material findings of fact and as to all issues or contentions not raised in the briefs filed pursuant to paragraph (f) of this rule.
  - (d) Rules 301-304 are not applicable to matters reviewed pursuant to summary review. Rules 305, 306 and 309 are applicable to summary review matters.
  - (e) (1) In lieu of a request for review, a party seeking summary review shall file a request that the Review Department designate the matter for summary review. Such request shall be filed within thirty (30) days after service of the hearing judge's decision or, if a post-trial motion has been made, the hearing judge's ruling on the post-trial motion.
  - (2) In a matter in which review is sought under rule 301, the Review Department may notify the parties on its own motion that it considers the matter eligible for summary review, and may invite the party seeking review to elect summary review. If the party declines to elect summary review, the matter will proceed pursuant to rules 301-304.
  - (3) If both a request for summary review under this rule and a request for review under rule 301 are timely filed in the same proceeding, the matter shall proceed pursuant to rules 301-304, subject to subparagraph (2) of this paragraph.
  - (f) In summary review proceedings, in lieu of briefs, and provided that supplemental briefs may be ordered by the Review Department:
    - (1) Within twenty (20) days after service of the order designating the proceeding for summary review, the party seeking summary review shall file an opening memorandum which shall:
      - (A) Have attached thereto a copy of the decision from which review is sought;
      - (B) Concisely state the issues presented on review, including, if applicable, the modifications requested with regard to the conclusions of law and/or disposition;
      - (C) List the authorities asserted in support of the contentions raised on review, with a concise statement of the proposition for which each authority is cited; and
      - (D) State whether or not oral argument is requested.
    - (2) Within fifteen (15) days of service of the opening memorandum, each opposing party shall file a responsive memorandum which shall:
      - (A) State whether the party disputes any issue raised or relief requested in the opening memorandum, and if so, the party's position regarding such disputed issue or request for relief;
      - (B) State whether the party disputes the propriety of summary review;
      - (C) Concisely state any additional issues which the party wishes to raise on review, including, if applicable, any modifications requested with regard to the conclusions of law and/or disposition;
      - (D) List the authorities upon which the party relies in support of its position, with a concise statement of the proposition for which each authority is cited; and
      - (E) State whether or not oral argument is requested.

- (3) Within ten (10) days of service of the responsive memorandum, the party seeking summary review may file a reply memorandum not more than five (5) pages in length addressing any new issues raised in the responsive memorandum.
- (g) Oral argument will not be heard in summary review proceedings unless specifically requested by a party or ordered by the Review Department on its own motion. If requested or ordered, oral argument shall be held by telephone conference on fifteen (15) days notice unless the parties agree otherwise. The telephone conference shall originate from one or more designated courtrooms which shall be open to the public if the proceeding is public. The judges of the Review Department may participate from designated courtrooms at different locations. Each party may present its oral argument either by telephone or in person at one of the designated courtrooms.
- (h) (1) Nothing in this rule shall restrict the Review Department's authority, in proceedings in which review is requested, to review independently the full record of State Bar proceedings or to require a full or partial transcript and briefing schedule prior to oral argument of any case.
- (2) Should the Review Department determine that review of the full record is warranted, it may decline a party's request to review a matter by summary review and order the matter reviewed under rules 301-304. In this event, the party requesting review may withdraw the request within thirty (30) days after service of the Review Department's order.
- (i) In the event the Review Department determines that a matter for which summary review has been requested is not appropriate for summary review, the parties shall have ten (10) days from service of notice of such determination by the Court to file a request for review pursuant to rule 301. Rule 301(a)(1) shall not apply to such requests for review.
- (j) After the filing of the Review Department's decision in a summary review matter, a party who intends to seek review by the Supreme Court must first file a motion for reconsideration by the Review Department, accompanied by certification that a trial transcript has been ordered and appropriate arrangements have been made for payment. The motion shall be filed within fifteen (15) days from service of the Review Department's decision.
- (1) For good cause, on motion of the party seeking reconsideration or on the Court's own motion after notice and an opportunity to be heard, the Court may order that all or part of the cost of the transcript be paid by the party or parties who originally sought summary review.
- (2) Upon the filing of a motion for reconsideration under this paragraph, the provisions of rules 301(a)(2), 301(b), 301(c), and 302-306 shall apply as if the motion for reconsideration were a request for review under rule 301, except that the time to file briefs shall be thirty (30) days for the opening brief, twenty (20) days for the responsive brief, and five (5) court days for the rebuttal brief.

Eff. January 1, 1995. Revised: July 1, 2000.

Source: New (but see Provisional Rules of Practice, rule 1309).

#### **RULE 309. RECONSIDERATION OF REVIEW DEPARTMENT ACTIONS**

- (a) Decisions or rulings of the Review Department shall not be subject to reconsideration unless the department otherwise orders on its own motion or upon a request for reconsideration filed and served by a party within fifteen (15) days of service of the Review Department's decision. The time to file a request for reconsideration may be



extended upon motion for good cause shown, so long as the record in the proceeding has not yet been transmitted to the Supreme Court.

- (b) If a request for reconsideration is filed, any opposing party may file a response thereto within fifteen (15) days of service of the request.

Eff. January 1, 1995.

Source: TRP 455 (substantially revised).

#### **RULE 310. REVIEW DEPARTMENT OPINIONS AS PRECEDENT**

- (a) All opinions of the Review Department which are designated for publication by the Court shall be published in the California State Bar Court Reporter or other publications as directed by the Board of Governors. Hearing Department decisions shall not be published.
- (b) A published opinion which is effective without a Supreme Court order, or as to which the recommended action has been adopted by a Supreme Court order, shall, in the absence of contrary Supreme Court precedent, be binding on the Hearing Department and citable as precedent in the State Bar Court.
- (c) Upon filing with the Supreme Court of a petition for writ of review of a proceeding, any published Review Department opinion in that proceeding shall cease to be citable as precedent unless and until the Supreme Court denies the petition for writ of review, dismisses the writ without issuing an opinion, or orders that the Review Department opinion shall remain citable.
- (d) Any Review Department opinion ordered depublished by the Supreme Court shall not be citable as precedent.

Eff. January 1, 1995.

Source: New.

#### **RULE 320. EXERCISE OF POWERS DELEGATED BY SUPREME COURT**

- (a) State Bar Court actions authorized under rules 951(a) through 951(e), inclusive, California Rules of Court, shall be taken by the Review Department, except that (1) any modification of probation pursuant to rule 951(c), California Rules of Court, shall instead be acted upon initially by a hearing judge as provided in rules 550-554; and (2) a motion to extend the time within which a member must take and pass a professional responsibility examination pursuant to rule 951(b), California Rules of Court, which is made prior to the expiration of the period of time during which the member was ordered to take and pass the examination, shall instead be acted upon by a hearing judge.
- (b) In addition to those actions referred to in paragraph (a) of this rule, the Review Department shall act on the following motions:
  - (1) Motions to vacate, delay the effective date of and temporarily stay the effective date of orders of interim suspension or orders of suspension issued under rules 951(a), 951(b) or 951(e), California Rules of Court. Such motions shall be governed by rule 321.
  - (2) Motions by the Chief Trial Counsel for reconsideration of a decision not to place an eligible member on interim suspension. Any motion under this subparagraph shall be filed within fifteen (15) days after notice of the decision, shall show proof of service on all opposing parties pursuant to the rule for service of subsequent pleadings (rule 61), and shall show the legal basis for the entry of an order of interim suspension. Opposition to the motion shall be filed and served within ten (10) days of service of the motion. Parties shall file the original and three copies of all pleadings submitted under this subparagraph. For good cause, the Review

Department may grant leave to file a motion under this subparagraph more than fifteen (15) days after notice of the decision.

Eff. January 1, 1995. Revised: January 1, 1996; July 1, 2000.  
Source: Provisional Rules of Practice, rule 1400(b), (c), and (d) (substantially revised).

**RULE 321. MOTIONS FOR RELIEF UNDER RULE 951, CAL. RULES OF COURT**

- (a) (1) Motions to the Review Department or the Hearing Department, as provided in rule 320(a) for relief under California Rules of Court, rule 951(a) (to delay or stay interim suspension), 951(b) (to extend time to take and pass professional responsibility examination, or vacate suspension for failure to do so) or 951(e) (to delay or stay of disciplinary suspension ordered by Supreme Court), shall be filed with the Clerk of the State Bar Court within fifteen (15) days after the filing of the suspension order (if any), shall show good cause for the relief requested as provided in the applicable paragraph of this rule, and shall show proof of service pursuant to the rule for service of subsequent pleadings (rule 61). Such service shall be made on the Deputy Chief Trial Counsel in the appropriate venue.
- (2) Parties filing pleadings relating to motions under this rule shall file the original and three copies of all pleadings. All pleadings relating to motions under this rule shall prominently bear the legend "RULE OF COURT 951 MATTER" in the caption immediately below the case number and above the title of the pleading.
- (3) For good cause, the Review Department or the Presiding Judge may grant leave to file a motion under this paragraph more than fifteen (15) days after the filing of the suspension order, and/or may order temporary relief to the extent necessary to permit the Review Department to act on the merits of the motion.
- (b) A motion under rule 951(a), California Rules of Court, to delay or temporarily stay the effect of a prior order of interim suspension imposed pursuant to Business and Professions Code section 6102(a) or to obtain an exception thereto should include the following information as part of the member's showing of good cause:
  - (1) The date the member was convicted and whether the member has appealed his or her conviction;
  - (2) What steps the member has taken to prepare for the impending suspension;
  - (3) The nature and extent of the member's current practice of law and the titles, court case numbers and dates of any future hearings, trials or the dates and nature of other important legal events for which clients need representation; whether in cases pending before a tribunal, the tribunal has been notified of the member's impending suspension; and whether such legal events may be rescheduled or substitute counsel is available;
  - (4) For each matter that is or would be affected by the member's suspension: when the member undertook representation of the client; whether the client has been notified of the conviction, the impending suspension and this motion; and whether the client would be substantially prejudiced by denial of this motion. If feasible, the motion should be accompanied by client declarations in support thereof; and
  - (5) Whether the member has notified the Office of Trials of the intended motion, and if so, when, to whom and how.
- (c) A member seeking, under rule 951(b), California Rules of Court, to extend the time previously ordered for taking and providing proof of passage of a professional responsibility examination or to vacate the member's suspension for failing to take and

pass the ordered examination should include with any motion made to the Review Department, or to the Hearing Department as provided in rule 320(a), the following information as part of the member's showing of good cause for relief:

- (1) Whether the member has previously taken the ordered examination; if so, on what date(s), what steps were taken to prepare for such examination and the score received on each occasion;
- (2) If the examination ordered was not taken on all available dates, why the member did not avail himself or herself of the opportunity to take the ordered examination on each of such dates;
- (3) The nature and extent of the member's current practice of law and titles, court case numbers and the dates of any future hearings, trials or the dates and nature of other important legal events for which clients need representation during the time period the member would be suspended absent the granting of this motion; whether in cases pending before a tribunal, the tribunal has been notified of the member's impending suspension; and whether such legal events may be rescheduled or substitute counsel is available;
- (4) For each matter that is or would be affected by the member's suspension: when the member undertook representation of the client; whether the client has been notified of this motion; and whether the client would be substantially prejudiced by denial of this motion. If feasible, the motion should be accompanied by client declarations in support thereof; and
- (5) Whether the member has notified the Office of Trials of his or her intended motion, and if so, when, to whom and how.

(d) A member seeking, under rule 951(e), California Rules of Court, to delay or temporarily stay the actual suspension from the practice of law in the State of California previously ordered by the Supreme Court should include with any motion made to the Review Department the following information as part of the member's showing of good cause for relief:

- (1) Whether the suspension resulted from a stipulation or a decision; the date the member became aware of the final order or decision of the State Bar Court recommending suspension, and the date the member became aware of the transmittal of the proposed order of suspension to the Supreme Court;
- (2) What steps the member has taken to prepare for the impending suspension;
- (3) The nature and extent of the member's current practice of law and the titles, court case numbers and dates of any future hearings, trials or the dates and nature of other important legal events for which clients need representation during the time period the member would be actually suspended absent the granting of this motion; whether in cases pending before a tribunal, the tribunal has been notified of the member's impending suspension; and whether such legal events may be rescheduled or substitute counsel is available;
- (4) For each matter that is or would be affected by the member's suspension: when the member undertook representation of the client; whether the client has been notified of this motion; and whether the client would be substantially prejudiced by denial of this motion. If feasible, the motion should be accompanied by client declarations in support thereof; and

- (5) Whether the member has notified the Office of Trials of his or her intended motion, and if so, when, to whom and how.

Eff. January 1, 1995. Revised: January 1, 1996; July 1, 1997; July 1, 2000.

Source: Paragraph (a): Provisional Rules of Practice, rule 1400(c)(i) (substantially revised); paragraphs (b) through (d): State Bar Court General Orders 92-3, 92-4, and 92-5, filed October 1, 1992.

## **DIVISION VIII**

### **SPECIFIC PROCEEDINGS**

#### **A. INVOLUNTARY INACTIVE ENROLLMENT PROCEEDINGS**

#### **1. BUSINESS AND PROFESSIONS CODE SECTION 6007(b)(1) (INSANITY OR MENTAL INCOMPETENCE)**

##### **RULE 400. NATURE OF PROCEEDING**

These rules apply to proceedings which involve, or may involve, transfer of a member to inactive enrollment under Business and Professions Code section 6007(b)(1).

Eff. January 1, 1995.  
Source: New.

##### **RULE 401. INITIAL PLEADING; SERVICE**

- (a) A proceeding under these rules may be initiated:
- (1) By the Office of the Chief Trial Counsel, by filing a motion for involuntary inactive enrollment, accompanied by evidence which is alleged to establish that a member has asserted a claim of insanity or mental incompetence as specified in Business and Professions Code section 6007(b)(1), or
  - (2) By the Court, by the issuance of an order to show cause, if a member who is a party to a proceeding before the Court asserts in that proceeding a claim of insanity or mental incompetence as specified in section 6007(b)(1), or

- (3) By a member, by filing a motion for involuntary inactive enrollment and asserting therein a claim of insanity or mental incompetence as specified in Business and Professions Code section 6007(b)(1).

- (b) The motion or order to show cause shall be served on all parties pursuant to the rule for service of initial pleadings (rule 60).

Eff. January 1, 1995.  
Source: New.

##### **RULE 402. PROCEEDINGS ON MOTION**

A motion under these rules shall be governed by the rules applicable to motions. Upon the filing and service of a motion under these rules, the Court may:

- (a) Issue an order enrolling the member as an inactive member, without notice or hearing, if the evidence before the Court shows clearly and convincingly that such an order is appropriate under Business and Professions Code section 6007(b)(1); or
- (b) Conduct further proceedings to determine whether the member should be enrolled as an inactive member; or
- (c) Issue an order denying the motion, if the evidence received does not show clearly and convincingly that an order of involuntary inactive enrollment would be authorized by section 6007(b)(1).

Eff. January 1, 1995.  
Source: New.

##### **RULE 403. PROCEEDINGS ON ORDER TO SHOW CAUSE**

If an order to show cause is issued under these rules, the parties shall have ten (10) days from the service thereof to file and serve responses thereto, unless otherwise ordered. Upon the filing of such responses, or the expiration of the time for filing such responses, the Court may:



- (a) Issue an order enrolling the member as an inactive member, without conducting a hearing, if the evidence before the Court shows clearly and convincingly that such an order is appropriate under Business and Professions Code section 6007(b)(1); or
- (b) Conduct further proceedings to determine whether the member should be enrolled as an inactive member; or
- (c) Issue an order declining to order the member's involuntary inactive enrollment, if the evidence before the Court does not show clearly and convincingly that an order of involuntary inactive enrollment would be authorized by section 6007(b)(1).

Eff. January 1, 1995.  
Source: New.

#### **RULE 404. REPRESENTATION BY COUNSEL**

- (a) If further proceedings are conducted under rules 402(b) or 403(b) and the member is not represented by counsel, the Court may appoint counsel without expense to the member. Appointed counsel shall be compensated by order of the Court for reasonable expenses and for reasonable fees for matters before the Court or for seeking review from the California Supreme Court of a decision of the Review Department ordering or upholding an order of inactive enrollment, at an hourly rate fixed by the Executive Committee. The reasonableness of counsel's fee and expenses shall be determined by the Court.
- (b) In cases where counsel has been appointed under this rule, the Clerk shall prepare and furnish to such counsel, free of charge upon request, copies of compact disks, audiotapes and/or transcripts of all or any part of any relevant State Bar Court proceeding involving the member.
- (c) Failure or inability of the member to assist counsel, standing alone, shall not be a basis for abatement of the section 6007(b)(1) proceeding, continuance or motion by

counsel to be relieved as attorney of record in proceedings under these rules.

- (d) Counsel appointed under this rule shall have the authority to file motions to abate or continue other pending State Bar Court proceedings involving the same member, and shall be compensated for doing so as provided in paragraph (a).
- (e) Within fifteen (15) days after the services of an order of a hearing judge awarding fees and/or costs under this rule, the counsel to whom the award is made may file a petition under rule 300 for review of the hearing judge's determination as to the amount to be awarded. The action of the Review Department on the petition shall be the final decision of the State Bar as to the amount to be awarded.

Eff. July 1, 2001  
Source: New

#### **RULE 405. EFFECTIVE DATE**

An order of involuntary inactive enrollment pursuant to Business and Professions Code section 6007(b)(1) shall be effective upon personal service or three (3) days after service by mail, whichever is earlier, unless the Court for good cause orders it to become effective at an earlier or later date.

Eff. January 1, 1995. Renumbered: July 1, 2001  
Source: New.

#### **RULE 406. REVIEW**

An order granting or denying involuntary inactive enrollment pursuant to Business and Professions Code section 6007(b)(1) shall be reviewable pursuant to rule 300.

Eff. January 1, 1995. Renumbered July 1, 2001.  
Source: New.

#### **RULE 407. INAPPLICABLE RULES**

The following rules shall not apply to proceedings on a motion or order to show cause pursuant to Business and Professions Code section 6007(b)(1):

- (a) Rules which by their terms apply only to disciplinary proceedings or to other specific proceedings, and
- (b) Rules 180-189 (discovery); rules 200-210 (default; obligation to appear at trial); rules 215-217 (admission of certain evidence); and rules 301-308 (review).

Eff. January 1, 1995. Renumbered: July 1, 2001.  
Source: New.

## **2. BUSINESS AND PROFESSIONS CODE SECTION 6007(b)(2). (ASSUMPTION OF JURISDICTION OVER LAW PRACTICE)**

### **RULE 410. NATURE OF PROCEEDING**

These rules apply to proceedings which involve, or may involve, transfer of a member to inactive enrollment under Business and Professions Code section 6007(b)(2).

Eff. January 1, 1995.  
Source: New.

### **RULE 411. INITIAL PLEADING; SERVICE**

- (a) A proceeding under these rules shall be initiated by the Office of the Chief Trial Counsel, by filing a motion for involuntary inactive enrollment, accompanied by evidence which is alleged to establish that a superior court has issued an order assuming jurisdiction over a member's law practice under Business and Professions Code section 6180 or 6190.
- (b) The motion shall be served on the member pursuant to the rule for service of initial pleadings (rule 60).

Eff. January 1, 1995.  
Source: New.

### **RULE 412. PROCEEDINGS ON MOTION**

Upon the filing and service of a motion in a proceeding under these rules, the Court may:

- (a) Issue an order enrolling the member as an inactive member, without notice or hearing, and subject to any appropriate exceptions specified in the court order assuming juris-

diction over the member's law practice, if the evidence before the Court shows clearly and convincingly that such an order is appropriate under Business and Professions Code section 6007(b)(2); or

- (b) Conduct further proceedings to determine whether the member should be enrolled as an inactive member, in which the issues shall be limited to determining whether clear and convincing evidence establishes that a superior court has issued an order assuming jurisdiction over a member's law practice under Business and Professions Code section 6180 or 6190, whether such order remains in effect, and whether such order provides for any exceptions; or
- (c) Issue an order denying the motion, if the evidence received does not show clearly and convincingly that an order of involuntary inactive enrollment would be authorized by section 6007(b)(2).

Eff. January 1, 1995.  
Source: New.

### **RULE 413. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In ruling on a motion under these rules, the Court shall not impose interim remedies pursuant to Business and Professions Code section 6007(h) in lieu of inactive enrollment, but shall make such exceptions to the order of inactive enrollment as are necessary to effectuate any exceptions in the order of the superior court.

Eff. January 1, 1995.  
Source: New.

### **RULE 414. EFFECTIVE DATE**

An order of involuntary inactive enrollment pursuant to Business and Professions Code section 6007(b)(2) shall be effective upon personal service or three (3) days after service by mail, whichever is earlier, unless the Court for good cause orders it to become effective at an earlier or later date.

Eff. January 1, 1995.  
Source: New.

**RULE 415. REVIEW**

An order granting or denying a motion for involuntary inactive enrollment pursuant to Business and Professions Code section 6007(b)(2) shall be reviewable pursuant to rule 300.

Eff. January 1, 1995.

Source: New.

**RULE 416. INAPPLICABLE RULES**

The following rules shall not apply to proceedings on a motion pursuant to Business and Professions Code section 6007(b)(2):

- (a) Rules which by their terms apply only to disciplinary proceedings or to other specific proceedings, and
- (b) Rules 180-189 (discovery); rules 200-210 (default; obligation to appear at trial); rules 215-217 (admission of certain evidence); and rules 301-308 (review).

Eff. January 1, 1995.

Source: New.

**3. BUSINESS AND PROFESSIONS CODE  
SECTION 6007(b)(3) (MENTAL  
INFIRMITY, ILLNESS, OR HABITUAL  
USE OF INTOXICANTS)**

**RULE 420. NATURE OF PROCEEDING**

These rules apply to proceedings which involve, or may involve, transfer of a member to inactive enrollment under Business and Professions Code section 6007(b)(3).

Eff. January 1, 1995.

Source: TRP 640 (substantially revised).

**RULE 421. INITIATION OF PROCEEDING**

- (a) A proceeding under these rules shall not be initiated except by notice to show cause issued by the Court after a determination of probable cause. The determination of probable cause is administrative in character and no notice or hearing is required.
- (b) (1) The Court may determine on its own motion, without notice or hearing, that

probable cause exists to issue a notice to show cause under this rule.

- (2) Any party may file a motion for the issuance of a notice to show cause under this rule. The motion shall be served on all opposing parties pursuant to the rule for service of initial pleadings (rule 60). No response to the motion shall be filed unless ordered by the Court.
- (c) A hearing to determine whether a notice to show cause shall issue may be ordered when, in the opinion of the Court, it will materially contribute to the determination of whether probable cause exists. All such hearings shall be informal and the rules of evidence shall not apply. The absence of such a hearing shall not invalidate or otherwise prejudice any subsequent proceeding.
- (d) Upon the issuance of a notice to show cause under this rule:
  - (1) If the member is not represented by counsel, the Court shall promptly appoint counsel pursuant to rule 422.
  - (2) The Clerk shall promptly serve the notice to show cause upon all parties pursuant to the rule for service of initial pleadings (rule 60).
  - (3) Each party shall file and serve a response to the notice to show cause within twenty (20) days from the later of: (A) the service of the notice to show cause, or (B) if counsel is appointed, the service of the order appointing counsel.
- (e) Except as provided under rule 106, the judge who conducts the probable cause hearing shall not be disqualified from conducting the hearing on the merits.

Eff. January 1, 1995.

Source: TRP 642 (substantially revised).

**RULE 422. REPRESENTATION BY COUNSEL**

- (a) No later than the issuance of a notice to show cause why the member should not be transferred to inactive enrollment un-

der Business and Professions Code section 6007(b) (3), the member shall be represented by counsel. If the member is not so represented, the Court shall appoint counsel without expense to the member. Appointed counsel shall be compensated by order of the Court for reasonable expenses, and for reasonable fees for matters before the Court or seeking review from the California Supreme Court of a decision of the Review Department ordering or upholding an order of inactive enrollment, at any hourly rate fixed by the Executive Committee. The reasonableness of counsel's fees and expenses shall be determined by the Court.

- (b) In cases where counsel has been appointed under this rule, the Clerk shall prepare and furnish to such counsel free of charge, upon request, copies of tapes and/or transcripts of all or any part of any relevant State Bar Court proceeding involving the member, including any hearing held under rule 421(c).
- (c) Failure or inability of the member to assist counsel, standing alone, shall not be a basis for abatement of the section 6007(b)(3) proceeding, continuance or motion by counsel to be relieved as attorney of record in proceedings under these rules.
- (d) Counsel appointed under this rule shall have the authority to file motions to abate or continue other pending State Bar Court proceedings involving the same member, and shall be compensated for so doing as provided in paragraph (a).
- (e) Within fifteen (15) days after the service of an order of a hearing judge awarding fees and/or costs under this rule, the counsel to whom the award is made may file a petition under rule 300 for review of the hearing judge's determination as to the amount to be awarded. The action of the Review Department on the petition shall be the final decision of the State Bar as to the amount to be awarded.

Eff. January 1, 1995. Revised: January 1, 1999.  
Source: TRP 641 (substantially revised).

#### **RULE 423. FAILURE TO COMPLY WITH ORDER FOR PHYSICAL OR MENTAL EXAMINATION**

- (a) Failure of a member to obey an order for physical or mental examination issued pursuant to Business and Professions Code section 6053 and rule 184 of these rules may constitute probable cause for issuance of a notice to show cause under this rule.
- (b) After issuance of a notice to show cause under these rules, if the member fails without good cause to obey an order of the Court for physical or mental examination of the member issued pursuant to Business and Professions Code section 6053 and rule 184 of these rules, that fact may be considered as evidence in determining whether the transfer of the member to inactive enrollment is warranted, but shall not by itself warrant such transfer.

Eff. January 1, 1995.

Source: TRP 644 (substantially revised).

#### **RULE 424. STIPULATION FOR TRANSFER TO INACTIVE ENROLLMENT**

- (a) The parties may stipulate to the transfer of the member to inactive enrollment. Such a stipulation must be approved by the Court and shall be binding on the parties unless the Court rejects the stipulation or, for good cause, relieves the parties from such binding effect.
- (b) The proposed stipulation shall set forth each of the following:
  - (1) if no finding of probable cause has been made, a waiver of the requirement for a finding of probable cause in order for proceedings to be initiated under Business and Professions Code section 6007(b)(3);
  - (2) a statement of the condition which is the basis for the transfer to inactive enrollment;
  - (3) a statement that the member is unable to practice law competently or without danger to the interests of the member's clients or to the public;



- (4) a statement that the member understands that if the stipulation is approved, the member will be precluded from practicing law until the member petitions for transfer to active enrollment and the petition is granted; and
  - (5) a statement that the member understands that transfer to inactive enrollment constitutes grounds for assumption of jurisdiction over the member's law practice by the superior court with jurisdiction over such practice.
- (c) The stipulation shall be signed by the member, the member's counsel of record, and the deputy trial counsel. If the member has no counsel of record, one shall be appointed under rule 422 and shall review and approve the stipulation prior to its submission to the hearing judge.
- (d) An order approving a stipulation under this rule shall specify the date upon which the inactive enrollment shall become effective. If no such date is specified, the inactive enrollment shall become effective upon personal service or three (3) days after service by mail, whichever is earlier, of the order.

Eff. January 1, 1995.  
Source: New.

#### **RULE 425. HEARING ON MERITS**

- (a) A hearing to determine whether the member should be placed on involuntary inactive enrollment shall be held as soon as practicable after the issuance of the notice to show cause. Due consideration shall be given to allowing time for the appointment of counsel, for the preparation of a defense, and for the completion of such discovery and/or physical or mental examination as may be appropriate.
- (b) The Clerk shall serve notice of the hearing on the member, the member's counsel, and the deputy trial counsel no less than thirty (30) days prior to the hearing date.

- (c) Exhibits and testimony from the probable cause hearing shall be admissible in the hearing on the merits, so far as relevant and material to the issues, provided that:

- (1) Exhibits and testimony offered under this paragraph shall be subject to objection as to any portions of such evidence that would not be admissible if offered for the first time at the hearing on the merits; and
- (2) If prior testimony is offered, the party offering such testimony shall make the witness available to testify at the hearing on the merits. The prior testimony may be supplemented by additional direct testimony at the instance of either party, and shall be subject to cross-examination by the opposing party.

Eff. January 1, 1995.  
Source: New.

#### **RULE 426. DECISION**

The decision in a proceeding under these rules shall:

- (a) Enroll the member as an inactive member if the Court finds that it has been established by clear and convincing evidence that involuntary inactive enrollment is warranted pursuant to Business and Professions Code section 6007(b)(3), and in addition, make appropriate findings as to the member's ability to conduct or assist in the defense of disciplinary proceedings; or
- (b) Dismiss the proceeding in the absence of such showing. Unless otherwise ordered for good cause, such dismissal shall be with prejudice to the commencement of a new proceeding based solely on the facts alleged in the dismissed proceeding, but without prejudice to the commencement of a new proceeding based on additional and/or different facts.

Eff. January 1, 1995.  
Source: TRP 649 (substantially revised).

**RULE 427. EFFECTIVE DATE**

An order of involuntary inactive enrollment pursuant to Business and Professions Code section 6007(b)(3) shall be effective upon personal service or three (3) days after service by mail, whichever is earlier, unless the Court for good cause orders it to become effective at an earlier or later date.

Eff. January 1, 1995.  
Source: New.

**RULE 428. REVIEW**

An order granting or denying involuntary inactive enrollment pursuant to Business and Professions Code section 6007(b)(3) shall be reviewable pursuant to rule 301.

Eff. January 1, 1995.  
Source: New.

**RULE 429. INAPPLICABLE RULES**

The following rules shall not apply in a proceeding pursuant to Business and Professions Code section 6007(b)(3):

- (a) Rules which by their terms apply only to disciplinary proceedings or to other specific proceedings, and
- (b) Rules 200-210 (default; obligation to appear at trial), and rules 215-217 (admission of certain evidence).

Eff. January 1, 1995.  
Source: New (but see TRP 648).

**4. TRANSFER TO ACTIVE ENROLLMENT  
FROM INACTIVE ENROLLMENT  
PURSUANT TO BUSINESS AND  
PROFESSIONS CODE SECTION 6007(b)**

**RULE 440. PETITION FOR TRANSFER TO ACTIVE ENROLLMENT**

A member who has been transferred to inactive enrollment pursuant to Business and Professions Code section 6007(b) may petition to terminate such enrollment, with or without interim remedies. The petition shall be verified, and shall state the facts alleged to warrant the

relief requested and such other information, if any, as was required by the order transferring the member to inactive enrollment. The petition shall be addressed to the Hearing Department and shall be filed with the Clerk and served on the Office of the Chief Trial Counsel pursuant to the rule for service of initial pleadings (rule 60).

Eff. January 1, 1995.  
Source: TRP 646 (substantially revised).

**RULE 441. MEDICAL AND HOSPITAL RECORDS**

The petition shall have attached thereto written authorizations by the member to enable the State Bar to examine and copy any and all medical, hospital and related records relevant to the member's original mental infirmity, illness or addiction and the member's present condition.

Eff. January 1, 1995.  
Source: TRP 647 (substantially revised).

**RULE 442. TRANSFER TO ACTIVE ENROLLMENT BY STIPULATION**

- (a) The parties may stipulate to the transfer of the member to active enrollment. Such a stipulation shall not be effective unless and until approved by a hearing judge, and shall be binding on the parties unless the hearing judge rejects the stipulation or, for good cause, relieves the parties from such binding effect.
- (b) The stipulation shall set forth each of the following:
  - (1) a statement that the condition which was the basis for the transfer to inactive enrollment no longer exists;
  - (2) a statement that the member is now able to practice law competently and without danger to the interests of the member's clients or to the public; and
  - (3) a statement that the member understands that the member will continue to be precluded from practicing law until the Court has approved the stipulation.

- (c) The stipulation shall be signed by the member, the member's counsel of record, if any, and the deputy trial counsel on behalf of the State Bar.

Eff. January 1, 1995.  
Source: New.

#### **RULE 443. HEARING ON PETITION**

- (a) If the member seeks a hearing on the petition, the petition shall include a request for a hearing. Whether or not the member has requested a hearing, the deputy trial counsel may request a hearing; such request shall be filed within twenty (20) days after service of the petition.
- (b) A hearing may be ordered when it will materially contribute to the determination by the Court whether a basis for the member's involuntary inactive enrollment no longer exists.
- (c) If ordered, the hearing shall be held as soon as practicable.
- (d) The Clerk shall serve notice of the hearing on the member, the member's counsel, if any, and the deputy trial counsel no less than twenty (20) days prior to the hearing date, subject to continuance for good cause shown.

Eff. January 1, 1995.  
Source: New.

#### **RULE 444. DECISION**

The decision shall be effective upon service unless otherwise ordered by the Court. The decision:

- (a) May grant the petition and terminate the inactive enrollment if the Court finds by clear and convincing evidence that there is no longer a basis for the member's involuntary inactive enrollment; or
- (b) May impose interim remedies in lieu of inactive enrollment if the Court finds by clear and convincing evidence that the member's condition is such that the interim remedies to be imposed will be sufficient to protect

the member's clients and the public; or

- (c) May deny the petition.

Eff. January 1, 1995.  
Source: New (but see TRP 649).

#### **RULE 445. TRANSFER TO ACTIVE STATUS**

A member's transfer to active enrollment does not operate to relieve the member of any suspension imposed on the member for any reason, or of any other independent restriction that may exist regarding the member's right to practice law.

Eff. January 1, 1995.  
Source: New (but see last sentence of TRP 649).

#### **RULE 446. REVIEW**

An order granting or denying a petition under these rules shall be reviewable pursuant to rule 300.

Eff. January 1, 1995.  
Source: New

#### **RULE 447. INAPPLICABLE RULES**

The following rules shall not apply in a proceeding for transfer to active enrollment under these rules:

- (a) Rules which by their terms apply only to disciplinary proceedings or to other specific proceedings, and
- (b) Rules 200-210 (default; obligation to appear at trial); rules 215-217 (admission of certain evidence); and rules 301-308 (review).

Eff. January 1, 1995.  
Source: New (but see TRP 648).

### **5. FAILURE TO MAINTAIN ADDRESS OF RECORD PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c)(1)**

#### **RULE 450. NATURE OF PROCEEDING**

These rules apply to proceedings pursuant to Business and Professions Code section 6007(c)(1), authorizing the involuntary transfer of a member to inactive enrollment upon a find-

ing that the member has not complied with Business and Professions Code section 6002.1 and cannot be located after reasonable investigation.

Eff. January 1, 1995.  
Source: TRP 799.1 (first paragraph).

#### **RULE 451. ISSUES**

The issues in a proceeding under Business and Professions Code section 6002.1 shall be limited to whether the member has complied with section 6002.1 and whether the member can be located after reasonable investigation.

Eff. January 1, 1995.  
Source: TRP 799.1 (second paragraph) (substantially revised).

#### **RULE 452. APPLICATION FOR INVOLUNTARY INACTIVE ENROLLMENT**

To initiate a proceeding under these rules, the Office of the Chief Trial Counsel shall file with the Clerk a verified application with supporting documents. The application shall set forth with particularity facts showing that the member has failed to comply with section 6002.1 and that the member cannot be located after reasonable investigation. The application shall be served pursuant to the rule for service of initial pleadings (rule 60).

Eff. January 1, 1995.  
Source: New.

#### **RULE 453. HEARING**

No hearing is required, but the Court may hold a hearing on an expedited basis if requested by the Office of the Chief Trial Counsel or if the Court determines that a hearing will materially contribute to the consideration of the application.

Eff. January 1, 1995.  
Source: New.

#### **RULE 454. ORDER**

Following a finding that a member has failed to comply with section 6002.1 and that the member cannot be located after reasonable investigation, involuntary inactive enrollment

shall be ordered, effective immediately, unless otherwise ordered by the Court.

Eff. January 1, 1995.  
Source: TRP 799.1 (second paragraph) (substantially revised).

#### **RULE 455. REVIEW**

An order denying an application under these rules shall be reviewable pursuant to rule 300.

Eff. January 1, 1995.  
Source: New.

#### **RULE 456. INAPPLICABLE RULES**

The following rules shall not apply in a proceeding under these rules:

- (a) Rules which by their terms apply only to disciplinary proceedings or to other specific proceedings, and
- (b) Rules 180-189 (discovery); rules 200-210 (default; obligation to appear at trial); rules 215-217 (admission of certain evidence); and rules 301-308 (review).

Eff. January 1, 1995.  
Source: New (but see TRP 796, 799.1).

### **6. THREAT OF HARM PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c)(1) THROUGH (c)(4)**

#### **RULE 460. NATURE OF PROCEEDING**

- (a) These rules apply to proceedings pursuant to Business and Professions Code sections 6007(c)(1) through 6007(c)(3) authorizing the transfer of a member to involuntary inactive enrollment upon a finding pursuant to Business and Professions Code section 6007(c)(2) that the member's conduct poses a substantial threat of harm to the member's clients or to the public (hereafter "proceedings pursuant to Business and Professions Code section 6007(c)(2)").
- (b) A proceeding under these rules shall be expedited.

Eff. January 1, 1995. Revised: January 1, 1997.  
Source: TRP 789 (substantially revised).



#### **RULE 461. APPLICATION FOR INVOLUNTARY ENROLLMENT**

(a) To initiate a proceeding under these rules, the Office of the Chief Trial Counsel shall file with the Clerk a verified application with supporting documents.

(1) The application shall set forth with particularity facts showing that the member's conduct poses a substantial threat of harm to the member's clients or to the public as set forth in Business and Professions Code section 6007(c).

(2) The Office of the Chief Trial Counsel may request a hearing in its application.

(3) The application shall identify, by case number and complaining witness name, if any, any investigation matters and pending disciplinary proceedings which involve the same transactions or occurrences that are relied on in the application. If any of the transactions or occurrences relied on in support of the application have not been made the subject of a notice of disciplinary charges filed prior to or simultaneously with the application, the application itself shall cite the statutes, rules or court orders alleged to have been violated, or to warrant the action proposed, and the particular acts or omissions, or other acts, constituting the alleged violation or violations, or the basis for the action proposed.

(b) The application shall contain a notice to the member, in prominent type, stating that the member must file a verified response to the application and request a hearing as provided in rule 462, or the right to a hearing will be waived.

(c) The Clerk shall set the hearing on an expedited basis, and notify the deputy trial counsel of the hearing date.

(d) Within three (3) court days after filing the application, the deputy trial counsel shall serve on the member, pursuant to the rule for service of initial pleadings (rule 60), a

copy of the application with supporting documents, together with a notice of the hearing date.

Eff. January 1, 1995. Revised: January 1, 1997.

Source: TRP 791 (substantially revised); paragraph (b), see TRP 799.6.

#### **RULE 462. MEMBER'S RESPONSE TO APPLICATION; WITHIN TEN DAYS TO PROTECT RIGHT TO HEARING**

The member against whom an application or order to show cause under these rules is directed shall have ten (10) days from the date of service of the application or order to show cause to file with the Clerk a verified response and a request that the hearing which has been set pursuant to rule 461 be held. Failure by the member to file a verified response and request a hearing will constitute a waiver of the right to a hearing.

Eff. January 1, 1995.

Source: TRP 792.

#### **RULE 463. STIPULATION TO INVOLUNTARY INACTIVE ENROLLMENT**

The member may stipulate to an involuntary inactive enrollment. Any stipulation to an involuntary inactive enrollment shall include the factual basis therefor. Such a stipulation shall be reviewed by the Court. The stipulation shall be effective upon service of the order approving the stipulation, unless a different effective date is specified in the order.

Eff. January 1, 1995.

Source: TRP 792.1 (substantially revised).

#### **RULE 464. EXPEDITED HEARING**

The Court shall conduct the hearing if timely requested by any party or if the Court determines that the hearing will materially contribute to the consideration of the application. The hearing shall be expedited and completed as soon as practicable, and shall not be interrupted or continued except for good cause.

Eff. January 1, 1995.

Source: TRP 793, 795 (substantially revised).

**RULE 465. EVIDENCE**

- (a) Evidence received at a hearing under Business and Professions Code section 6007(c)(2) shall be by declaration, request for judicial notice, and transcripts, without testimony or cross-examination, except for good cause shown. To the extent the evidence to be offered at the hearing was not previously attached to and served with either the State Bar's application pursuant to rule 461 or the member's response pursuant to rule 462, such proposed evidence shall be filed with the Court and served upon the opposing party no later than three (3) court days before the first day set for hearing. When the proposed evidence is filed less than five (5) court days before the hearing, the filing party shall file and serve a copy on the other party in a manner to assure actual receipt by the other party no later than two (2) calendar days before the hearing.
- (b) A party seeking permission to introduce oral testimony, except for oral evidence in rebuttal to oral testimony presented by the other party, shall file and serve, no later than three (3) court days before the first day set for hearing, a written statement setting forth the substance of the proposed testimony, the names and addresses of witnesses, and a reasonable time estimate for the testimony. When the statement is filed less than five (5) court days before the hearing, the filing party shall file and serve a copy on the other party in a manner to assure actual receipt by the other party no later than two (2) calendar days before the hearing.
- (c) When a contested hearing is held, declarations in support of the application are not introduced into evidence merely by filing. Their admissibility must be ruled on by the judge at the hearing. Objections and motions to strike material in declarations shall be ruled on by the judge at the time of the hearing.

- (d) When an application under Business and Professions Code section 6007(c)(2) is supported by declaration, transcripts, or request for judicial notice, and a hearing is not held, it must clearly appear from specific facts shown in the application that the member's conduct poses a substantial threat of harm to the member's clients or to the public. Declarations and deposition transcripts must contain probative facts and show the source of the declarant's information, so that the Court can weigh the evidence. Declarations on information and belief are hearsay and generally insufficient by themselves to support a finding for involuntary enrollment; conclusions of law in a declaration are not evidence.

Eff. January 1, 1995. Revised: July 1, 2003  
Source: TRP 793.1 (substantially revised).

**RULE 466. DECISION; DENIAL WITHOUT PREJUDICE**

- (a) The Court shall render a decision including findings of fact which shall be filed no later than ten (10) court days after the date set for hearing, if no hearing is held, or no later than ten (10) court days after it is submitted after the hearing, if the hearing is held.
- (b) The decision shall be effective upon personal service or three (3) days after service by mail, whichever is earlier, unless otherwise ordered by the Court, and shall include findings of fact as to whether:
  - (1) the member was given notice of the proceeding pursuant to rule 461; and
  - (2) each of the factors prescribed by Business and Professions Code section 6007(c)(2) has been established by clear and convincing evidence, and a conclusion as to whether the member's conduct poses a substantial threat of harm to the member's clients or the public.
- (c) The decision may order that the member be enrolled as an inactive member pursuant to Business and Professions Code

section 6007(c)(2), or may order that interim remedies be imposed pursuant to Business and Professions Code section 6007(h).

- (d) Any denial of an application under these rules shall be without prejudice to a subsequent application based upon additional facts. A subsequent application based upon additional facts may incorporate the facts alleged in the prior application(s).

Eff. January 1, 1995.

Source: TRP 794 (substantially revised).

#### **RULE 467. REVIEW**

Review of a decision in a proceeding under Business and Professions Code section 6007(c)(2) may only be sought on the grounds of error of law or abuse of discretion, and pursuant to rule 300.

Eff. January 1, 1995.

Source: New (but see TRP 798).

#### **RULE 468. INAPPLICABLE RULES**

The following rules shall not apply in proceedings pursuant to Business and Professions Code section 6007(c)(2):

- (a) Rules which by their terms apply only to disciplinary proceedings or to other specific proceedings, and
- (b) Rules 150-156 (subpoenas); rules 180-189 (discovery); rules 200-210 (default; obligation to appear at trial); and rules 301-308 (review).

Eff. January 1, 1995.

Source: New (but see TRP 796).

#### **RULE 480. INITIATION OF DISCIPLINARY PROCEEDING AFTER INVOLUNTARY INACTIVE ENROLLMENT GRANTED**

- (a) These rules apply to disciplinary proceedings involving the underlying matters on which a Business and Professions Code section 6007(c)(2) application was based, except where the application for involuntary inactive

enrollment is based on a recommendation of disbarment which was filed prior to the application. These proceedings shall be expedited.

- (b) Service of the notice of disciplinary charges, the response thereto, the Court's decision, any motion for reconsideration and the response thereto, any request for review, the parties' briefs on review and the decision of the Review Department shall be made by personal delivery or overnight mail. Service by overnight mail shall extend the prescribed period of notice and/or any right or duty to do an act or make a response within a specified period after service of such document by one (1) day.

Eff. January 1, 1995.

Source: TRP 799.5 (substantially revised).

#### **RULE 481. ALLEGATIONS IN NOTICE OF DISCIPLINARY CHARGES**

A notice of disciplinary charges filed after the filing of a related application for involuntary inactive enrollment under Business and Professions Code section 6007(c)(2) shall indicate which counts of the notice of disciplinary charges refer to the factual allegations in the application for inactive enrollment.

Eff. January 1, 1995.

Source: New (but see TRP 799.6).

#### **RULE 482. EXPEDITED DISCIPLINARY PROCEEDINGS**

Where an order of involuntary inactive enrollment has been issued, and unless the time limitations set forth in this rule are freely and knowingly waived by the respondent as determined by the Court:

- (a) The notice of disciplinary charges shall be filed no later than forty-five (45) days following the effective date of the involuntary inactive enrollment, provided that the Office of the Chief Trial Counsel may, upon noticed motion, be granted up to an additional thirty (30) days to file the notice of disciplinary charges upon a showing of good cause;

- (b) Notwithstanding rule 182(b), formal discovery shall commence immediately upon the filing of the notice of disciplinary charges;
- (c) Notwithstanding rule 181(a), formal discovery shall be completed within ninety (90) days following the service of the notice of disciplinary charges;
- (d) The hearing judge's decision on the merits of the underlying matter shall be filed within six (6) months of the effective date of the involuntary inactive enrollment;
- (e) The Review Department decision shall be filed within five (5) months of the filing of the request for review; and
- (f) Subject to the provisions of rule 483, the time from the effective date of the involuntary inactive enrollment to the time of filing the decision of the Review Department shall, in no event, exceed a period of one (1) year.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: TRP 799.7.

#### **RULE 483. UNDUE DELAY**

A motion for transfer to active enrollment shall be granted upon proof of failure to adhere to any of the requirements set forth in rule 482 unless the Court finds that the respondent or respondent's counsel caused the delay or that in the interest of public protection or for other good cause shown, such delay was justified. Any party may request a hearing on the motion. The Court shall have discretion to order a hearing if no hearing is requested. The reasons for denial of transfer shall be set forth in writing. An order granting transfer to active enrollment does not operate to relieve the member of any suspension imposed on the member for any reason, or of any other, independent restriction that may exist regarding the member's right to practice law.

Eff. January 1, 1995.  
Source: TRP 799.8 (substantially revised); last sentence, see last sentence of TRP 649.

#### **RULE 484. REVIEW OF ORDER ON MOTION FOR TRANSFER TO ACTIVE ENROLLMENT**

An order granting or denying a motion for transfer to active enrollment under rule 483 shall be reviewable pursuant to rule 300.

Eff. January 1, 1995.  
Source: New.

### **7. TRANSFER TO ACTIVE ENROLLMENT FROM INACTIVE ENROLLMENT PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c)(2)**

#### **RULE 490. PETITION**

- (a) A member who has been transferred to inactive enrollment under Business and Professions Code section 6007(c)(2) may petition for transfer to active enrollment, with or without interim remedies. The petition shall be verified, shall state the facts alleged to warrant the relief requested, and shall contain such other information, if any, as was required by the order transferring the member to inactive enrollment. The petition shall be addressed to the Hearing Department and shall be filed with the Clerk and served on the Office of the Chief Trial Counsel pursuant to the rule for service of initial pleadings (rule 60). Any denial of a petition under this rule shall be without prejudice to a petition based upon additional facts. A subsequent petition based upon additional facts may incorporate the facts alleged in the prior petition(s).
- (b) The Court shall vacate an order of inactive enrollment made pursuant to Business and Professions Code section 6007(c)(4) in the event that the recommendation for disbarment is subsequently changed, either on reconsideration or review, to a recommendation for lesser discipline.

Eff. January 1, 1995. Revised: January 1, 1997.  
Source: TRP 799 (first paragraph) (substantially revised).



**RULE 491. STIPULATIONS**

The parties may stipulate to the transfer of a member to active enrollment upon a showing that the member's conduct warrants the relief requested. A stipulation under this rule shall include statements of fact sufficient to warrant the stipulated relief and may include expert testimony. The stipulation shall be reviewed by the Court, which retains the discretion to reject the stipulation in the interests of justice.

Eff. January 1, 1995.

Source: TRP 799 (third paragraph) (substantially revised).

**RULE 492. DECISION; DENIAL WITHOUT PREJUDICE**

- (a) The Court shall render a decision on the petition, including findings of fact, which shall be filed no later than ten (10) court days after the date set for hearing, if no hearing is held, or no later than ten (10) court days after the conclusion of the hearing, if a hearing is held.
- (b) The decision shall be effective upon service, unless otherwise ordered by the Court, and shall include findings of fact as to whether it has been established by clear and convincing evidence that the circumstances which warranted the original involuntary inactive enrollment no longer exist, and a conclusion of law as to whether the relief granted will create a substantial threat of harm to the member's clients or the public.
- (c) Any denial of a petition under these rules shall be without prejudice to a subsequent petition based upon additional facts. A subsequent petition based upon additional facts may incorporate the facts alleged in the prior petition(s).

Eff. January 1, 1995.

Source: New (but see TRP 794).

**RULE 493. LIMITATIONS ON EFFECT OF TRANSFER**

A decision, or an order approving a stipulation, which orders the member's transfer to active enrollment does not operate to relieve

the member of any suspension imposed on the member for any reason, or of any other independent restriction that may exist regarding the member's right to practice law.

Eff. January 1, 1995.

Source: New (but see last sentence of TRP 649).

**RULE 494. REVIEW**

Review of a decision in a proceeding under these rules may only be sought on the grounds of error of law or abuse of discretion, and pursuant to rule 300.

Eff. January 1, 1995.

Source: New (but see TRP 798).

**RULE 495. INAPPLICABLE RULES**

The following rules shall not apply in a proceeding for transfer to active enrollment under these rules:

- (a) Rules which by their terms apply only to disciplinary proceedings or to other specific proceedings, and
- (b) Rules 200-210 (default; obligation to appear at trial); rules 215-217 (admission of certain evidence); and rules 301-308 (review).

Eff. January 1, 1995.

Source: New (but see TRP 796).

**8. INACTIVE ENROLLMENT UPON  
ENTRY OF DEFAULT IN DISCIPLINARY  
PROCEEDING (BUSINESS AND  
PROFESSIONS CODE SECTION 6007(E);  
TERMINATION**

**RULE 500. CONDITIONS FOR INVOLUNTARY INACTIVE ENROLLMENT**

Pursuant to Business and Professions Code section 6007(e), upon entry of the respondent's default, the Court shall order the involuntary inactive enrollment of a respondent in a disciplinary proceeding if the Court determines that the conditions in section 6007(e)(1) have been met. The Clerk shall serve the order by first class mail addressed to the respondent at the address required to be maintained on State

Bar records pursuant to Business and Professions Code section 6002.1. If the member is a person not required by Business and Professions Code section 6002.1 to maintain an address on the official membership records of the State Bar, the member may be served by first class mail pursuant to the rule for service of subsequent pleadings (rule 61). The transfer to inactive enrollment shall be effective upon personal service or three (3) days after service by mail, whichever is earlier, of the order, unless otherwise ordered by the Court.

Eff. January 1, 1995; Revised: January 1, 1997.  
Source: TRP 552(b)(ii), (iv) (substantially revised).

#### **RULE 501. TERMINATION OF INVOLUNTARY INACTIVE ENROLLMENT**

- (a) The Court shall order the termination of the respondent's inactive enrollment under Business and Professions Code section 6007(e) when the respondent meets the conditions in section 6007(e)(2). The Clerk shall serve the order by first class mail addressed to the respondent at the address required to be maintained on State Bar records pursuant to section 6002.1. If the member is a person not required by Business and Professions Code section 6002.1 to maintain an address on the official membership records of the State Bar, the member may be served by first class mail pursuant to the rule for service of subsequent pleadings (rule 61). The termination of inactive enrollment shall be effective upon service of the order.
- (b) If a respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007(e) is still in effect on the effective date of the final order on the merits in the underlying disciplinary proceeding, the involuntary inactive enrollment shall terminate as of such effective date.
- (c) The termination of a respondent's inactive enrollment under this rule does not operate to relieve the respondent of any suspension imposed on the respondent for any reason, or of any other, independent

restriction that may exist regarding the respondent's right to practice law.

Eff. January 1, 1995.  
Source: TRP 552(b)(iii), (iv) (substantially revised).

#### **RULE 502. NO HEARING REQUIRED**

The inactive enrollment and any transfer to active enrollment are administrative. No hearing is required.

Eff. January 1, 1995.  
Source: TRP 552(b)(iv).

#### **RULE 503. APPLICABLE RULES**

Involuntary inactive enrollment pursuant to Business and Professions Code section 6007(e) is governed solely by rules 500-503, and rule 300 (interlocutory review). The underlying disciplinary proceeding in which an order of inactive enrollment under Business and Professions Code section 6007(e) is filed shall continue to be governed by all rules applicable in such proceeding.

Eff. January 1, 1995; Revised: January 1, 1997.  
Source: New.

#### **RULE 504. RETROACTIVITY**

The amendments to Business and Professions Code section 6007(e), which became effective on January 1, 1997, shall apply to all disciplinary matters in which the notice of disciplinary charges was filed after that date.

Eff. January 1, 1997.  
Source: New.

### **9. INTERIM REMEDIES PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(H)**

#### **RULE 510. INTERIM REMEDIES AS ALTERNATIVE TO INVOLUNTARY INACTIVE ENROLLMENT**

In a proceeding for involuntary inactive enrollment brought under Business and Professions Code section 6007(b)(3) or 6007(c)(2):

- (a) Either party may move the Court to order interim remedies as alternative relief. The motion shall set forth the nature of the interim remedies requested. The proceeding shall be governed by the applicable rules for involuntary inactive enrollment proceedings.
- (b) The parties may stipulate to interim remedies in lieu of inactive enrollment, provided that any such stipulation shall specify the interim remedies to be ordered and the factual basis therefor, and must be approved by the Court.
- (c) The Court may order interim remedies in lieu of involuntary inactive enrollment on the Court's own motion or on motion of any party.
- (d) Interim remedies shall not be ordered when involuntary inactive enrollment is warranted.

Eff. January 1, 1995.

Source: New (but see TRP 794, second-to-last sentence).

#### **RULE 511. PROCEEDINGS SEEKING INTERIM REMEDIES ONLY**

A proceeding may be brought to seek interim remedies pursuant to Business and Professions Code section 6007(h), without seeking the member's involuntary inactive enrollment. Such a proceeding shall be governed by these rules and shall be expedited.

Eff. January 1, 1995.

Source: New.

#### **RULE 512. APPLICATION FOR INTERIM REMEDIES**

To initiate a proceeding seeking interim remedies without requesting involuntary inactive enrollment, the party initiating the proceeding shall file with the Clerk a verified application with supporting documents. The application shall set forth with particularity the factual and legal basis for the relief sought, shall specify the nature of the interim remedies requested, and shall state whether a hearing is requested. The application shall be served

on the opposing party pursuant to the rule for service of initial pleadings (rule 60).

Eff. January 1, 1995.

Source: New.

#### **RULE 513. APPLICATION BASED SOLELY ON ALLEGATIONS PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(b)(3)**

If an application seeking interim remedies is based solely on allegations pursuant to Business and Professions Code section 6007(b)(3):

- (a) The proceeding shall be non-public unless otherwise ordered by the Court for good cause.
- (b) The Court may appoint counsel to represent the member, if the Court deems it necessary to do so in order to protect the member's rights. Counsel appointed under this rule shall have the same authority as and shall be compensated in the same manner as counsel appointed to represent a member in a proceeding under Business and Professions Code section 6007(b)(3), and the member's failure or inability to assist such counsel, standing alone, shall not be a basis for abatement, continuance, or motion by counsel to be relieved as attorney of record.
- (c) A physical or mental examination of the member may be ordered for good cause pursuant to Business and Professions Code section 6053 and rule 184 of these rules, and if such an examination is ordered, failure by the member to obey such order may be considered as evidence in determining whether interim remedies are warranted.

Eff. January 1, 1995.

Source: New.

#### **RULE 514. RESPONSE**

The opposing party shall file and serve a verified response within ten (10) days from the service of the application. The response shall state whether a hearing is requested. Failure to file a response shall constitute a waiver of hearing and, unless otherwise ordered by the Court

for good cause, shall preclude the party from appearing in the proceeding.

Eff. January 1, 1995.  
Source: New.

#### **RULE 515. STIPULATION**

The parties may stipulate to interim remedies, provided that any such stipulation shall specify the interim remedies to be ordered and the factual basis therefor, and must be approved by the Court and by the member's counsel, if any. The stipulated interim remedies shall be effective upon personal service or three (3) days after service by mail, whichever is earlier, of the order approving the stipulation, unless otherwise provided in the stipulation.

Eff. January 1, 1995.  
Source: New.

#### **RULE 516. HEARING**

If a hearing was requested by either party or if the Court determines that a hearing will materially contribute to its consideration of the application, a hearing shall be set on an expedited basis. If a hearing is held, the hearing shall be conducted pursuant to rule 465, unless the application seeking interim remedies is based solely on allegations pursuant to Business and Professions Code section 6007(b)(3), in which case the hearing shall be conducted pursuant to rule 425.

Eff. January 1, 1995.  
Source: New.

#### **RULE 517. BURDEN OF PROOF**

The party seeking interim remedies shall have the burden of establishing by clear and convincing evidence that the member cannot practice law in the absence of the requested remedies without a substantial threat of harm to the interests of the member's clients or the public, or that interim remedies are otherwise justified under the circumstances.

Eff. January 1, 1995.  
Source: New.

#### **RULE 518. DECISION**

- (a) The Court shall file a decision, including findings of fact showing the basis for ordering interim remedies or for the denial of the application, no later than ten (10) court days after the due date for filing the response, if no hearing is held, or no later than ten (10) court days after submission of the matter at the hearing.
- (b) The decision shall be effective upon personal service or three (3) days after service by mail, whichever is earlier, unless otherwise ordered by the Court.

Eff. January 1, 1995.  
Source: New.

#### **RULE 519. REVIEW**

Review of a decision in a proceeding seeking interim remedies may only be sought on the grounds of error of law or abuse of discretion, and pursuant to rule 300.

Eff. January 1, 1995.  
Source: New.

#### **RULE 520. INAPPLICABLE RULES**

The following rules shall not apply in a proceeding seeking interim remedies:

- (a) Rules which by their terms apply only to disciplinary proceedings or to other specific proceedings, and
- (b) Rules 200-210 (default; obligation to appear at trial); rules 215-217 (admission of certain evidence); and rules 301-308 (review).

Eff. January 1, 1995.  
Source: New.

### **10. MODIFICATION OR TERMINATION OF INTERIM REMEDIES**

#### **RULE 530. SCOPE**

These rules govern motions to modify or terminate interim remedies ordered pursuant to Business and Professions Code section 6007(h).

Eff. January 1, 1995.  
Source: New.



**RULE 531. FILING AND SERVICE OF MOTION**

A motion to modify or terminate interim remedies shall state the nature of the relief requested and the factual and legal basis therefor, and shall state whether a hearing is requested. The party filing the motion shall serve it pursuant to the rule for service of initial pleadings (rule 60).

Eff. January 1, 1995.  
Source: New.

**RULE 532. RESPONSE**

The party served with a motion under these rules shall file and serve a verified response within ten (10) days from the service of the petition. The response shall state whether a hearing is requested. Failure to file a response shall constitute a waiver of hearing and, unless otherwise ordered by the Court for good cause, shall preclude the party from appearing in opposition to the motion.

Eff. January 1, 1995.  
Source: New.

**RULE 533. STIPULATION**

The parties may stipulate to the modification or termination of interim remedies, provided that any such stipulation shall specify any interim remedies to be ordered and the factual basis for the stipulated relief, and must be approved by the Court and by the member's counsel, if any. The stipulated relief shall be effective ten (10) days from service of the order approving the stipulation, unless otherwise provided in the stipulation.

Eff. January 1, 1995.  
Source: New.

**RULE 534. HEARING**

If a hearing was requested by either party or if the Court determines that a hearing will materially contribute to its consideration of the motion, a hearing shall be set on an expedited basis.

Eff. January 1, 1995.  
Source: New.

**RULE 535. BURDEN OF PROOF**

The party seeking modification or termination of interim remedies shall have the burden of establishing by clear and convincing evidence that the requested relief is justified under the circumstances.

Eff. January 1, 1995.  
Source: New.

**RULE 536. DECISION**

- (a) The Court shall file a decision, including findings of fact showing the basis for the relief granted or for the denial of the requested relief, no later than ten (10) court days after the filing of the response, if no hearing is held, or no later than ten (10) court days after submission of the matter at the hearing.
- (b) The decision shall be effective upon personal service or three (3) days after service by mail, whichever is earlier, unless otherwise ordered by the Court

Eff. January 1, 1995.  
Source: New.

**RULE 537. REVIEW**

Review of a decision on a motion under these rules may only be sought on the grounds of error of law or abuse of discretion, and pursuant to rule 300.

Eff. January 1, 1995.  
Source: New.

**RULE 538. INAPPLICABLE RULES**

The following rules shall not apply in proceedings on a motion to modify or terminate interim remedies:

- (a) Rules which by their terms apply only to disciplinary proceedings or to other specific proceedings, and
- (b) Rules 200-210 (default; obligation to appear at trial); rules 215-217 (admission of certain evidence); and rules 301-308 (review).

Eff. January 1, 1995.  
Source: New.

## **B. PROBATION PROCEEDINGS**

### **1. PROBATION MODIFICATION AND EARLY TERMINATION PROCEEDINGS**

#### **RULE 550. MOTIONS FOR MODIFICATION OR EARLY TERMINATION OF PROBATION**

- (a) Either the respondent or the Office of Probation may move for early termination of probation no earlier than six (6) months after the effective date of the order imposing probation; a motion for modification of probation may be made at any time. A motion for modification or early termination of probation shall state facts which show that the request is consistent with the protection of the public; the successful rehabilitation of the respondent, including the degree of compliance with the conditions of probation; and the maintenance of the integrity of the legal profession. When considering motions for modification or early termination, the State Bar Court shall balance the interests of the respondent and the public and determine whether modification or termination of probation serves the objectives of probation.
- (b) Unless expressly authorized by the Supreme Court, no motion or stipulation will be considered by the State Bar Court to modify an actual or stayed period of suspension whether it is a condition of probation or not.
- (c) The motion must set forth clearly the specific relief requested and be accompanied by one or more declarations setting forth with particularity facts showing:
  - (1) that the requested relief is warranted; and
  - (2) that granting the request will be fully consistent with the objectives of probation as provided in this rule.
- (d) A response to the motion shall be filed within thirty (30) days following service of the motion. A party may file and serve a written request for a hearing at the time of filing the motion or within ten (10) days following ser-

vice of the response. Failure to request a hearing shall constitute a waiver of hearing.

- (e) The party filing the motion shall serve it in compliance with the rule for service of initial pleadings (rule 60), except that service upon the State Bar pursuant to 60(c) shall be made upon the Office of Probation at 1149 S. Hill Street, Los Angeles, CA 90015-2299.
- (f) The Court shall hold a hearing if timely requested by either party or if the Court determines that a hearing will materially contribute to the Court's consideration of the motion. The hearing shall be set on an expedited basis.

Eff. January 1, 1995. Revised: January 1, 2004

Source: New (but see TRP 614.5(f) and rule 1400(b), Provisional Rules of Practice).

#### **RULE 551. STIPULATION TO MODIFICATION OR CORRECTION OF CONDITIONS OR EARLY TERMINATION OF PROBATION**

The parties may stipulate to a modification or correction of conditions of probation, as permitted by rule 951(c) of the California Rules of Court, or to early termination of probation. The stipulation must state specific facts demonstrating that the requested relief is appropriate and serves the objectives of probation. The stipulation shall be reviewed by the Court, which retains the discretion to reject the stipulation in the interest of justice.

Eff. January 1, 1995.

Source: New (but see rule 951(c), Cal. Rules of Court, and rule 1400(b), Provisional Rules of Practice).

#### **RULE 552. BURDEN OF PROOF; DISCOVERY; EVIDENCE**

- (a) The burden of proof on a motion for modification or early termination of probation shall be by clear and convincing evidence.
- (b) Unless the Court orders otherwise, discovery shall not be afforded, except that the Office of Probation may take the respondent's deposition promptly after filing of the motion, provided that the taking of such deposition shall not extend any time limit provided under these rules unless ordered by the Court for good cause.

(c) If no hearing is held, the declarations offered in support of and in response to the motion shall be received in evidence, subject to the Court's ruling on any written objections thereto filed and served by a party within ten (10) days after the filing of the response to the motion.

(d) If a hearing is held:

- (1) The declarations submitted in support of and in response to the motion shall be admitted in evidence, subject to appropriate objection, as the direct testimony of the respective declarants, and
- (2) The party which filed a declaration shall produce the declarant for cross-examination at the hearing if an opposing party so requests in a writing filed and served no later than five (5) days after the service of the declaration in question.

Eff. January 1, 1995. Revised: January 1, 2004  
Source: New.

#### **RULE 553. RULING ON MOTION; REVIEW**

- (a) The Court shall issue a written order stating its ruling on the motion and the reasons therefor.
- (1) A ruling granting a motion for correction, modification or early termination of probation ordered by the State Bar Court as a condition of a reproof, or approving a stipulation or granting a motion to correct or modify probation terms as to which the State Bar Court has delegated authority under rule 951(c) of the California Rules of Court, or denying any motion or rejecting any stipulation, shall be in the form of an order.
  - (2) A ruling granting a motion for early termination of probation ordered by the Supreme Court, or granting a motion for modification of probation as to which the State Bar Court does not have delegated authority under rule 951(c) of the California Rules of Court, shall be in the form of a recommendation to the Supreme Court.

(b) A ruling by a hearing judge on a motion under these rules shall be reviewable only pursuant to rule 300.

Eff. January 1, 1995.  
Source: New.

#### **RULE 554. INAPPLICABLE RULES**

The following rules shall not apply in proceedings on a motion for modification or early termination of probation:

- (a) Rules which by their terms apply only to disciplinary proceedings or to other specific proceedings, and
- (b) Rules 200-210 (default; obligation to appear at trial); rules 215-217 (admission of certain evidence); and rules 301-308 (review).

Eff. January 1, 1995.  
Source: New.

## **2. PROBATION REVOCATION PROCEEDINGS**

#### **RULE 560. PROBATION REVOCATION PROCEEDINGS**

Upon reasonable cause to believe that a condition or conditions of probation have been violated, the Office of Probation may charge the probation violation in a probation revocation proceeding governed by these rules.

Alternatively, the Office of the Chief Trial Counsel may charge the probation violation in an original disciplinary proceeding, based on the respondent's violation of Business and Professions Code section 6068(k), governed by the rules for disciplinary proceedings generally.

Eff. January 1, 1995. Revised: January 1, 2004.  
Source: TRP 610(a) (eff. 1/1/93).

#### **RULE 561. BURDEN OF PROOF IN PROBATION REVOCATION PROCEEDINGS; EXPEDITED PROCEEDING**

The burden of proof in probation revocation proceedings shall be by preponderance of the evidence and the proceedings shall be expedited.

Eff. January 1, 1995.  
Source: TRP 610.5 (eff. 1/1/93).

**RULE 562. DISCIPLINE RECOMMENDED IN PROBATION REVOCATION PROCEEDINGS**

In probation revocation proceedings, any actual suspension recommended shall not exceed the entire period of stayed suspension. The order may recommend that all or part of the actual suspension imposed as a result of the probation revocation be stayed, and that a new period of probation be imposed, which may be of a different duration and/or under different conditions than the original probation.

Eff. January 1, 1995.

Source: TRP 611 (eff. 1/1/93).

**RULE 563. CONDUCT OF PROBATION REVOCATION PROCEEDINGS**

Probation revocation proceedings shall be conducted as follows:

- (a) The proceeding shall be initiated by the filing of a motion to revoke probation, which shall be accompanied by one or more declarations setting forth all facts relied on in support of the motion. If a hearing on the motion is requested, the motion shall so state. Failure to request a hearing shall waive any right to a hearing. The motion and all supporting pleadings and evidence, including declarations and a copy of an approved response form, shall be served on the respondent pursuant to the rule for service of initial pleadings (rule 60).
- (b) The respondent shall file a response to the motion.
  - (1) Such response, including any opposition, shall be filed and served within twenty (20) days of the service of the motion. All facts relied on in the response or opposition shall be set forth in one or more accompanying declarations.
  - (2) If the respondent desires a hearing on the motion, the response shall so state, regardless of whether the motion requested a hearing. If the respondent desires to cross-examine the declarants at the hearing, the response shall so state.
- (c) Failure to file a response requesting a hearing shall constitute waiver by the respondent of any right to request a hearing, and failure to file any response shall constitute an admission of the factual allegations contained in the motion and supporting documents.
- (c) No discovery shall be conducted except by leave of the Court upon good cause shown.
- (d) The Court shall hold a hearing if timely requested by any party or if the Court determines that a hearing will materially contribute to the consideration of the motion. If a hearing is held:
  - (1) The hearing shall be set on an expedited basis.
  - (2) At the hearing, the declarations submitted in support of the motion shall be admitted in evidence, subject to appropriate objection, as the direct testimony of the respective declarants, provided that if the respondent filed a timely response to the motion in which the respondent expressly requested a hearing and the opportunity to cross-examine the declarants, counsel for the Office of Probation shall produce the declarants at the hearing, and the respondent shall have the right to cross-examine the declarants.
  - (3) If the respondent filed declarations in response to the motion, such declarations shall be admitted in evidence as the direct testimony of the respective declarants subject to appropriate objection, only if (A) the respondent produces the declarant at the hearing for cross-examination, or (B) counsel for the Office of Probation waives the right to cross-examine the declarant.
- (e) If no hearing is held, the declarations and exhibits submitted in support of and in opposition to the motion shall be received in evidence, subject to the Court's ruling on any appropriate objections thereto asserted by the respondent in the response to the motion or by the Office of Probation in a writing filed and served not more than ten (10) court days after the service of the response to the motion.



- (f) In probation revocation proceedings, the Court shall issue a written order stating its reasons for the recommended action.

Eff. January 1, 1995. Revised: January 1, 2004.

Source: TRP 612 and 613 (eff. 1/1/93) (substantially revised).

#### **RULE 564. INVOLUNTARY INACTIVE ENROLLMENT IN PROBATION MATTERS**

In a probation revocation proceeding, or in an original disciplinary proceeding for violation of Business and Professions Code section 6068(k), the Court may order the involuntary inactive enrollment of the respondent upon a finding that each of the elements of Business and Professions Code section 6007(d) has occurred. The order shall be effective upon service, unless otherwise ordered by the judge. The involuntary inactive enrollment shall terminate upon the occurrence of the conditions in Business and Professions Code section 6007(d)(2).

Eff. January 1, 1995. Revised: January 1, 2004.

Source: TRP 610(b) (eff. 1/1/93) (second sentence substantially revised).

#### **RULE 565. REVIEW**

A ruling on a motion to revoke probation shall be reviewable on an expedited basis under rule 301.

Eff. January 1, 1995.

Source: TRP 614 (eff. 1/1/93).

#### **RULE 566. INAPPLICABLE RULES**

- (a) The following rules shall not apply in probation revocation proceedings:
- (1) Rules which by their terms apply only to other specific proceedings, and
  - (2) Rule 101 (notice of disciplinary charges); rule 103 (response to notice of disciplinary charges); rules 200-209 (default); and rule 213 (State Bar's burden of proof).
- (b) Rules 180-189 (discovery) shall apply in probation revocation proceedings only if and to the extent that discovery is permitted by the Court.

- (c) Rule 210 (obligation to appear at trial) shall apply in probation revocation proceedings only if a hearing is held.

- (d) Rule 214 (rules of evidence) shall apply in probation revocation proceedings only subject to the provisions of rule 563.

Eff. January 1, 1995.

Source: New.

### **C. RULE 955 PROCEEDINGS**

#### **RULE 580. DEFINITIONS; NATURE OF PROCEEDING**

- (a) As used in these rules, "rule 955" refers to rule 955 of the California Rules of Court, and "rule 955 order" means an order requiring a respondent to comply with rule 955 of the California Rules of Court.
- (b) These rules apply to rule 955 proceedings, that is, proceedings in which the respondent is charged with having failed to comply with a rule 955 order within the time allowed by the rule 955 order for compliance.
- (c) As used in these rules, "declaration of compliance" means a declaration executed by a respondent in compliance or attempted compliance with a rule 955 order.

Eff. January 1, 1995.

Source: New (but see TRP 2.28, 551(a)).

#### **RULE 581. SERVICE AND FILING OF DECLARATIONS OF COMPLIANCE**

- (a) All declarations of compliance shall be accompanied by proof of service on the Office of Probation.
- (b) All declarations of compliance shall be filed by the Clerk of the State Bar Court, regardless of their form or the date of their submission.
- (c) A declaration of compliance received by the Clerk of the State Bar Court which is not accompanied by proof of service on the Office of Probation shall be filed, and the Clerk shall serve it on the Office of Probation.

Eff. January 1, 1995. Revised: January 1, 2004.

Source: New.

**RULE 582. TIME FOR FILING PROCEEDING  
BASED ON UNTIMELY OR  
FORMALLY DEFECTIVE  
DECLARATION**

Any notice of disciplinary charges which alleges that a declaration of compliance was untimely filed or was defective in form must be filed within ninety (90) days after the service of such declaration of compliance on the Office of Probation, unless a later filing is permitted by the Court for good cause shown. This time limit does not apply to a notice of disciplinary charges alleging a substantive defect in a declaration of compliance, or alleging failure to file any declaration of compliance. For purposes of this rule, any failure of a declaration of compliance to aver in substance that the respondent fully complied with the requirements of rule 955(a) shall be considered a defect in substance and not a defect in form covered by this rule.

Eff. January 1, 1995. Revised: January 1, 2004.  
Source: New.

**RULE 583. INITIAL PLEADING**

The initial pleading in a rule 955 proceeding is a notice of disciplinary charges pursuant to rule 955 filed and served by the Office of the Chief Trial Counsel following the alleged failure of a respondent to comply with a rule 955 order. A copy of the rule 955 order shall be attached as an exhibit to the notice of disciplinary charges. The notice of disciplinary charges shall comply with rule 101(b).

Eff. January 1, 1995.  
Source: New (but see TRP 551(a)).

**RULE 584. RESPONSE TO NOTICE OF  
DISCIPLINARY CHARGES**

The respondent shall file and serve a verified response to the notice of disciplinary charges as provided in rule 103.

Eff. January 1, 1995.  
Source: New.

**RULE 585. RECORD**

The State Bar Court record includes all court orders and documents on file with the Clerk of the Supreme Court and/or the Clerk of the State Bar Court in the proceeding, including the rule 955 or-

der and all documents submitted to the Clerk of the Supreme Court or the Clerk of the State Bar Court by the respondent in compliance or attempted compliance therewith or in response thereto, whether or not introduced in evidence.

Eff. January 1, 1995.  
Source: TRP 620 (substantially revised).

**RULE 586. EXPEDITED PROCEEDING; LIMITED  
DISCOVERY**

- (a) A proceeding charging a failure to comply with a rule 955 order shall be expedited.
- (b) After the due date for filing the response, the Office of the Chief Trial Counsel may conduct discovery without leave of court as to the following limited issues:
  - (1) For all pending matters at the time the rule 955 order was filed: the names, addresses and telephone numbers of clients; the case numbers and names of any litigation filed in a court, and the names of the courts in which pending litigation was filed; and the names, addresses and telephone numbers of opposing counsel in pending litigation; and
  - (2) The documents by which notice was provided as required by rule 955 to clients, courts, and opposing counsel.
- (c) No other discovery shall be conducted by any party except by leave of the Court for good cause shown.

Eff. January 1, 1995.  
Source: New.

**RULE 587. APPLICABLE RULES**

- (a) Rules which by their terms apply only to other specific proceedings shall not apply in rule 955 proceedings.
- (b) All other rules shall apply, except that rules 180-189 (discovery) shall apply in rule 955 proceedings only to the extent that discovery is permitted by rule 586(b) or by the Court pursuant to rule 586(c).

Eff. January 1, 1995.  
Source: New (but see TRP 622).

## D. CONVICTION PROCEEDINGS

### RULE 600. NATURE; INITIAL PLEADING

- (a) These rules apply to conviction proceedings, that is, proceedings initiated as a result of a respondent's criminal conviction and pursuant to Business and Professions Code sections 6101 and 6102.
- (b) The initial pleading in a conviction proceeding is a notice of hearing on conviction filed and served by the Clerk following the issuance of an order of reference by the State Bar Court or the Supreme Court. A copy of the order of reference shall be attached as an exhibit to the notice of hearing on conviction. The notice of hearing on conviction shall include the following notice:

IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN INVOLUNTARY INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOUR DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.

"STATE BAR RULES REQUIRE YOU TO FILE YOUR WRITTEN RESPONSE TO THIS NOTICE WITHIN TWENTY DAYS AFTER SERVICE.

"IF YOUR DEFAULT IS ENTERED AND THE DISCIPLINE IMPOSED BY THE SUPREME COURT IN THIS PROCEEDING INCLUDES A PERIOD OF ACTUAL SUSPENSION, YOU WILL REMAIN SUSPENDED FROM THE PRACTICE OF LAW FOR AT LEAST THE PERIOD OF TIME SPECIFIED BY THE SUPREME COURT. IN ADDITION, THE ACTUAL SUSPENSION WILL CONTINUE UNTIL YOU HAVE REQUESTED, AND THE STATE BAR COURT HAS GRANTED, A MOTION FOR

TERMINATION OF THE ACTUAL SUSPENSION. AS A CONDITION FOR TERMINATING THE ACTUAL SUSPENSION, THE STATE BAR COURT MAY PLACE YOU ON PROBATION AND REQUIRE YOU TO COMPLY WITH SUCH CONDITIONS OF PROBATION AS THE STATE BAR COURT DEEMS APPROPRIATE. SEE RULE 205, RULES OF PROCEDURE FOR STATE BAR COURT PROCEEDINGS."

Eff. January 1, 1995. Revised: January 1, 1999; July 1, 2000.  
Source: New (but see TRP 2.5 551(a)).

### RULE 601. RESPONSE

The respondent in a conviction proceeding shall file and serve a response to the notice of hearing on conviction within twenty (20) days after service thereof, subject to any extension of time granted by order of the Court. The response shall state respondent's position on the issues stated in the order of reference, and any objections thereto, and shall contain an address for service on the respondent in the proceeding.

Eff. January 1, 1995.  
Source: New (but see TRP 602 (second paragraph)).

### RULE 602. DEFAULT

If the respondent fails to file a response as required by rule 601, the default procedures set forth in rule 200 shall apply, except that:

- (a) References in rule 200 to "notice of disciplinary charges" shall be deemed to be references to "notice of hearing on conviction" and the wording of the notices required by rules 200(a)(4) and 200(c) shall be modified accordingly.
- (b) Rule 200(a)(3) shall apply only if the degree of discipline is placed at issue by the order of reference attached to the notice of hearing on conviction, and if so, the words "if culpability is found" in rule 200(a)(3) shall be deemed to read "if moral turpitude or other misconduct warranting discipline is found".
- (c) Notwithstanding the respondent's default, subsequent augmented orders of reference

issued by the State Bar Court or the Supreme Court, if any, shall be served on the respondent pursuant to the rule for service of initial pleadings (rule 60).

Eff. January 1, 1995.

Source: New (but see TRP 555(f)).

**RULE 603. RIGHT TO SET ASIDE DEFAULT  
UPON AUGMENTATION OF  
ORDER OF REFERENCE**

If the respondent's default has been entered, and the State Bar Court or the Supreme Court subsequently issues an augmented order of reference in the proceeding, then, notwithstanding the provisions of rule 200(d), the respondent may file a response under rule 601, directed to the augmented order of reference, within twenty (20) days of the service of the augmented order of reference. If the respondent files such a response, the respondent may participate in all portions of the proceeding held pursuant to the augmented order of reference.

Eff. January 1, 1995.

Source: New.

**RULE 604. RECORD AND EVIDENCE**

The State Bar Court record includes all court orders and documents on file with the Clerk of the State Bar Court in the proceeding, whether or not introduced in evidence. The evidence introduced may include that permitted by Business and Professions Code section 6102(g).

Eff. January 1, 1995.

Source: TRP 604.

**RULE 605. ISSUES**

The issue or issues before the Court are those stated in the order(s) of reference.

Eff. January 1, 1995.

Source: TRP 602 (first sentence).

**RULE 606. SUMMARY DISBARMENT**

The Review Department, on its own motion or on motion of any party, may direct the Hearing Department to conduct a hearing for

the sole purpose of resolving factual issues as to whether the criteria required for summary disbarment are present. A decision by the Hearing Department pursuant to a referral under this rule shall be reviewable pursuant to rule 301 and such review shall be completed prior to further proceedings in the Hearing Department concerning other factual issues.

Eff. January 1, 1996.

Source: New.

**RULE 607. WAIVER OF FINALITY OF  
CONVICTION**

The parties may stipulate that the Court may decide the issues as to the discipline to be imposed even if the criminal conviction is not final.

Eff. January 1, 1995. Renumbered: January 1, 1996.

Source: New.

**RULE 608. APPLICABLE RULES**

Rules which by their terms apply only to other specific proceedings shall not apply in conviction proceedings. All other rules shall apply, except that rules 200-209 (default) shall apply as modified by rules 602 and 603.

Eff. January 1, 1995. Renumbered: January 1, 1996.

Source: New (but see TRP 603).

**E. PROCEEDINGS BASED ON  
PROFESSIONAL MISCONDUCT IN  
ANOTHER JURISDICTION**

**RULE 620. SCOPE AND NATURE OF  
PROCEEDING**

- (a) These rules apply to proceedings pursuant to Business and Professions Code section 6049.1(b).
- (b) A proceeding under these rules shall be expedited.

Eff. January 1, 1995.

Source: TRP 800.



**RULE 621. HOW COMMENCED; NOTICE OF DISCIPLINARY CHARGES; RESPONSE**

- (a) A proceeding under these rules shall commence with the filing and service on the respondent of a notice of disciplinary charges.
- (b) A notice of disciplinary charges issued under these rules may recite, as its only basis, and shall attach thereto and incorporate therein a certified copy of the findings and final order of the other jurisdiction imposing discipline on the respondent with sufficient detail to permit identification of such foreign disciplinary proceeding. The notice of disciplinary charges shall also cite the California statutes or rules alleged to have been violated or to warrant the action proposed and shall have attached thereto a copy of the statutes, rules or court orders of the foreign jurisdiction found to have been violated by the respondent.
- (c) Within twenty (20) days of service of the notice of disciplinary charges, the respondent shall file with the Clerk and serve on the Office of Trial Counsel a response limited to the issues set forth in Business and Professions Code section 6049.1(b)(1)-(3).

Eff. January 1, 1995. Revised: July 1, 2003.  
Source: TRP 801 (substantially revised).

**RULE 623. NO FORMAL DISCOVERY EXCEPT FOR GOOD CAUSE SHOWN**

In proceedings under these rules, formal discovery shall not be conducted unless the Court so orders upon a showing of good cause and then only upon the terms and conditions ordered.

Eff. January 1, 1995.  
Source: TRP 804.

**RULE 624. RECORD**

A certified copy of any portion of the record of disciplinary proceedings of another jurisdiction conducted as specified in Business and Professions Code section 6049.1(a) is admissible in evidence in a proceeding under these rules.

Eff. January 1, 1995.  
Source: TRP 805.

**RULE 625. APPLICABLE RULES**

- (a) Rules which by their terms apply only to other specific proceedings shall not apply in proceedings pursuant to Business and Professions Code section 6049.1(b).
- (b) All other rules shall apply, except that:
  - (1) Rules 101 (notice of disciplinary charges) and 103 (response to notice of disciplinary charges) shall apply subject to the provisions of rule 621; and
  - (2) Rules 180-189 (discovery) shall apply only if and to the extent that discovery is permitted by the Court.

Eff. January 1, 1995.  
Source: New (but see TRP 806).

**F. PROCEEDINGS TO DEMONSTRATE REHABILITATION, PRESENT FITNESS AND LEARNING AND ABILITY IN THE LAW PURSUANT TO STANDARD 1.4(c)(ii)**

**RULE 630. SCOPE AND EXPEDITED NATURE OF PROCEEDING**

- (a) These rules apply to proceedings conducted pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct, in which a petitioner seeks to be relieved from actual suspension pursuant to a disciplinary order which requires, as a condition to resuming practice, that the petitioner demonstrate, to the satisfaction of the Court, the petitioner's rehabilitation, present fitness to practice and/or present learning and ability in the general law.
- (b) Proceedings under these rules shall be expedited. Service of the petition and all pleadings, decisions and other documents shall be made by personal delivery or by overnight mail.

Eff. January 1, 1995.  
Source: TRP 810.

**RULE 631. PETITION FOR RELIEF FROM  
ACTUAL SUSPENSION**

- (a) A petition for relief from actual suspension shall be verified by the petitioner and shall state with particularity the facts alleged to demonstrate the petitioner's rehabilitation, present fitness to practice, and present learning and ability in the general law.
- (b) The petition shall be accompanied by declaration(s), exhibit(s), and/or request(s) for judicial notice establishing from specific facts that the petitioner is rehabilitated, is presently fit to practice law and has present learning and ability in the general law.
- (c) The petitioner shall serve a copy of the verified petition and supporting documents upon the Office of the Chief Trial Counsel in the manner required by the rule for service of initial pleadings (rule 60), except that personal delivery or overnight mail shall be used. No filing fee shall be charged for filing the petition.

Eff. January 1, 1995.

Source: TRP 811 (substantially revised), 813, 820.

**RULE 632. EARLIEST TIME FOR FILING**

The petition may be filed no earlier than six (6) months prior to the earliest date that the petitioner's actual suspension can be terminated, and no earlier than six (6) months following the finality of an adverse decision upon a prior petition, unless a shorter period is ordered by the Court for good cause.

Eff. January 1, 1995.

Source: TRP 812.

**RULE 633. RESPONSE; REQUEST FOR  
HEARING**

- (a) Within forty-five (45) days after service of the petition, the Office of the Chief Trial Counsel shall file and serve a response, which may be accompanied by declaration(s), exhibit(s), and request(s) for judicial notice.
- (b) The response shall either:

- (1) oppose the petition;
- (2) state that the Office of the Chief Trial Counsel does not oppose the petition; or
- (3) state that the Office of the Chief Trial Counsel does not possess sufficient facts to determine whether or not it opposes the petition.

- (c) If the Office of the Chief Trial Counsel opposes the petition or states that it does not possess sufficient facts to determine whether or not it opposes the petition, a hearing on the petition shall be set within thirty-five (35) days of service of the response. No less than fifteen (15) days notice of the hearing date must be given.
- (d) If the response of the Office of the Chief Trial Counsel states that it does not oppose the petition, and no party requests a hearing, the Court may consider and grant the petition without a hearing. If any party requests a hearing, or in the event that the Court is considering denying the petition, the matter shall be set for hearing within thirty-five (35) days of service of the response. No less than fifteen (15) days notice of the hearing date must be given.
- (e) The petitioner may elect to withdraw the petition without prejudice at any time prior to the submission of the matter.

Eff. January 1, 1995.

Source: TRP 816 (substantially revised).

**RULE 634. BURDEN OF PROOF**

The petitioner shall have the burden of proving by a preponderance of the evidence that the petitioner has demonstrated satisfaction of the conditions of standard 1.4(c)(ii) pursuant to the disciplinary order that imposed the requirement of compliance with standard 1.4(c)(ii).

Eff. January 1, 1995.

Source: TRP 817.

**RULE 635. DISCOVERY**

There shall be no discovery in proceedings conducted pursuant to these rules except to the extent and upon the terms and conditions permitted by order of the Court upon a showing of good cause, except that the Office of the Chief Trial Counsel may take the petitioner's deposition promptly after the filing of the petition, provided that the taking of such deposition shall not extend any time limit provided under these rules unless ordered by the Court for good cause.

Eff. January 1, 1995.  
Source: TRP 819.

**RULE 636. DOCUMENTARY EVIDENCE**

Except upon Court order for good cause, no party may submit documentary evidence aside from that filed with the application or the response. A request to submit additional documentary evidence shall be made in writing, shall have attached a copy of the proposed documentary evidence, and shall be filed and served no less than ten (10) days prior to the hearing.

Eff. January 1, 1995.  
Source: TRP 820 (substantially revised).

**RULE 637. TESTIMONIAL EVIDENCE**

- (a) The petitioner may testify at the hearing. Any party may present oral testimony to rebut oral testimony presented by an opposing party. Other oral testimony shall not be permitted except upon order of the Court for good cause shown.
- (b) A party seeking permission to introduce oral testimony other than rebuttal shall file a written statement setting forth a summary of the proposed testimony and stating the reasons why such testimony could not be presented by declaration. Such written statement shall be filed and served not less than ten (10) days prior to the hearing.

Eff. January 1, 1995.  
Source: TRP 821 (substantially revised).

**RULE 638. DECISION**

Unless the time is waived by the petitioner or additional time is otherwise justified by the circumstances, the Court shall file its decision no more than fifteen (15) days after the conclusion of the hearing. If no hearing was held, the Court shall file its decision no more than fifteen (15) days after the filing of the Office of the Chief Trial Counsel's response, or from the date such response was due, if none was filed. The decision granting or denying the petition must contain findings of fact and conclusions of law.

Eff. January 1, 1995.  
Source: TRP 822.

**RULE 639. REVIEW**

A decision under these rules shall be reviewable pursuant to rule 300. The decision of the Review Department shall be filed within thirty (30) days following submission of the matter.

Eff. January 1, 1995.  
Source: TRP 823 (substantially revised).

**RULE 640. TERMINATION OF ACTUAL SUSPENSION**

The petitioner shall remain on actual suspension while the petition is pending before the Court. If the petition is granted, the petitioner shall remain on actual suspension until the expiration of the period of actual suspension set forth in the disciplinary order which imposed the requirement of compliance with standard 1.4(c)(ii), and until the petitioner satisfies any other requirements for the termination of actual suspension pursuant to such disciplinary order.

Eff. January 1, 1995.  
Source: TRP 824 (substantially revised).

**RULE 641. APPLICABLE RULES**

- (a) The following rules shall not apply to proceedings on a petition for relief from actual suspension pursuant to standard 1.4(c)(ii):

- (1) Rules which by their terms apply only to disciplinary proceedings or to other specific proceedings, and
  - (2) Rules 200-210 (default; obligation to appear at trial) and rules 301-308 (review).
- (b) All other rules shall apply, except that:
- (1) Rules 60 (service of initial pleading) and 61 (service of subsequent pleadings) shall apply subject to the provisions of rule 630(b), and
  - (2) Rules 180-189 (discovery) shall apply only if and to the extent that discovery is permitted by the Court.

Eff. January 1, 1995.  
Source: New (but see TRP 825).

## G. RESIGNATION PROCEEDINGS

### RULE 650. RESIGNATION WITH CHARGES PENDING

Resignations with charges pending are governed by rule 960, California Rules of Court, and shall be in the form required by rule 960(b). Charges are pending when the member is the subject of an investigation by the Office of Investigations, or a disciplinary proceeding under these rules, or when the member is the subject of a criminal charge or investigation, or has been convicted of a felony or misdemeanor.

Eff. January 1, 1995.  
Source: First sentence: new; second sentence: TRP 650.

### RULE 651. PERPETUATION OF EVIDENCE

When a resignation pursuant to rule 960, California Rules of Court is filed with the State Bar Court, or as provided by an order of abatement, the Office of the Chief Trial Counsel may perpetuate testimony and/or documentary evidence (hereafter collectively "evidence") pertaining to the conduct of the member which is pertinent to any future inquiry into the member's conduct or qualification to practice law.

Eff. January 1, 1995  
Source: TRP 650, 651 (substantially revised).

### RULE 652. NOTICE OF INTENT TO PERPETUATE EVIDENCE

Within thirty (30) days after the filing of the member's resignation with charges pending, the Office of the Chief Trial Counsel shall file and serve a notice of intent to perpetuate evidence which shall set forth an estimate of the time required to complete perpetuation, or a statement that perpetuation is not required.

Eff. January 1, 1995.  
Source: TRP 654 (substantially revised); see also TRP 551(c).

### RULE 653. PERPETUATION PROCEDURE

- (a) Upon the filing of a notice of intent to perpetuate, the Office of the Chief Trial Counsel may commence perpetuation of evidence.
- (b) Perpetuation of evidence shall be accomplished by depositions or stipulations as to facts. The member may not take the deposition of any person except by order of the Court for good cause shown. Good cause is established when a witness is a person whose testimony should be taken in the interest of justice and when such action is consistent with the limited purpose of perpetuation.
- (c) Upon the filing of a motion arising in the course of perpetuation, a hearing judge shall be assigned to rule on the motion. In addition to ruling on such motion, the hearing judge may set status conferences and/or require status reports in order to monitor the progress of the perpetuation.

Eff. January 1, 1995.  
Source: New (but see TRP 653, 655, 656).

### RULE 654. REPORT OF COMPLETION

Upon completion of perpetuation, the Office of the Chief Trial Counsel shall file and serve on the member a notice that perpetuation has been completed. Upon request, the member may obtain a copy of the evidence perpetuated from the Office of the Chief Trial Counsel at the member's expense.

Eff. January 1, 1995.  
Source: TRP 657 (substantially revised); see also TRP 658.



**RULE 655. USE OF PERPETUATED EVIDENCE**

Subject to the provisions of rule 214, the evidence perpetuated may be admitted in evidence in any future proceeding pertaining to the member's conduct or qualifications to practice law, except that the Office of the Chief Trial Counsel may introduce deposition testimony as permitted under Code of Civil Procedure section 2025(u)(3) without making a showing that any of the factors therein is present.

Eff. January 1, 1995.

Source: TRP 658 (last sentence) (substantially revised).

**RULE 656. INAPPLICABLE RULES**

- (a) The following rules shall not apply in proceedings on resignations with charges pending and perpetuation of evidence:
  - (1) Rules which by their terms apply only to disciplinary proceedings or to other specific proceedings, and
  - (2) Rule 60 (service of initial pleadings); rule 102 (motions which extend time to file response); rules 116-118 (abatement); rules 200-210 (default; obligation to appear at trial); rules 211-224 (pretrial, trial, evidence, decision, post-trial motions); rules 250-271 (dispositions); and rules 301-308 (review).
- (b) Rules 150-156 (subpoenas) and 180-189 (discovery) shall apply only for the purpose of perpetuation of evidence pursuant to rule 653.

Eff. January 1, 1995.

Source: New (but see, TRP 658).

**H. REINSTATEMENT PROCEEDINGS.****RULE 660. INITIATION OF PROCEEDING**

These rules apply to proceedings for reinstatement to membership in the State Bar after resignation with or without charges pending and after disbarment. A reinstatement proceeding is initiated by the filing and service of a petition for reinstatement and payment of the required fee by the party seeking reinstatement.

Eff. January 1, 1995.

Source: New (but see TRP 551(b)).

**RULE 661. REQUIREMENTS**

- (a) The petition for reinstatement shall be verified by the petitioner and shall be addressed to the State Bar Court. The original and three copies shall be filed with the Clerk. The petition shall be on the form approved by the Court and completed in compliance with the instructions therein.
- (b) The petitioner shall serve a copy of the petition on the Office of Trials pursuant to the rule for service of initial pleadings (rule 60), accompanied by two (2) sets of original fingerprints on record cards furnished by the State Bar. The fingerprints shall be used and retained for the purposes prescribed in Business and Professions Code section 6054.
- (c) The petition shall not be filed by the Court unless accompanied by a proof of service establishing compliance with the service requirements of this rule. The petition shall be accompanied by a filing fee in the amount specified by the Board of Governors.

Eff. January 1, 1995.

Source: TRP 660, 661 (substantially revised); paragraph (b), see also TRP 663-664.

**STATE BAR NOTE RE RULE 662**

At the request of the California Supreme Court, implementation of the September 1996 amendments to rule 662 has been suspended. The suspended provisions of rule 662 include the establishment in subdivisions (b) and (c) of different minimum waiting periods for filing a reinstatement petition, as well as the requirement in subdivisions (d) and (e) that a petitioner who is seeking reinstatement must take and pass the Attorney Bar Examination prior to filing the petition for reinstatement.

The former version of rule 662, which was adopted effective January 1, 1995, will remain in effect until further order of the Supreme Court. That previous version is reprinted following the suspended rule 662.

**RULE 662. EARLIEST TIME FOR FILING REINSTATEMENT PETITION**

-----[Implementation Suspended]-----

- (a) *After resignation without charges pending, a first or subsequent petition for reinstatement may be filed at any time.*

- (b) Except as provided by order of the Supreme Court, no petition for reinstatement shall be filed within five years after the filing date of the petitioner's resignation with charges pending or within ten years if the resignation with charges pending related to a criminal investigation or proceeding involving a felony involving moral turpitude under the laws of California or of the United States or would meet the criteria for summary disbarment identified in Business and Professions Code Section 6102(c). The 5-year period shall apply if the related criminal investigation concludes in a conviction of a misdemeanor or in no conviction.
- (c) Except as provided by order of the Supreme Court, the State Bar Court, in any recommendation involving the disbarment of a member, shall articulate the earliest time in which a member may file a petition for reinstatement. The State Bar Court shall consider a five (5) year period, a ten (10) year period, or a permanent prohibition against the filing of a reinstatement petition, based upon, but not limited to, the following factors:
- (1) nature of underlying conduct
  - (2) prior record of discipline
  - (3) likelihood of rehabilitation
  - (4) existence of aggravating or mitigating circumstances
  - (5) protection of the public, the courts and the profession
  - (6) length of any interim suspension following criminal conviction
- (d) Except as provided by order of the Supreme Court, a petitioner seeking reinstatement to the practice of law in the State of California, following the filing of a resignation with charges pending, or as the result of an order of disbarment, shall take and pass the Attorney Bar Examination, administered by the Committee of Bar Examiners, within two years prior to the filing of a petition for reinstatement. Proof of passage shall, for purposes of reinstatement only, be deemed to establish, by clear and convincing evidence, that the peti-

tioner possesses the requisite present ability and learning in the general law.

- (e) A subsequent petition for reinstatement following disbarment or resignation with charges pending shall not be filed earlier than two years after the effective date of an adverse decision upon a prior petition, unless a shorter period is ordered by the Court for good cause, and shall include a further requirement that the petitioner take and pass the Attorney Bar Examination administered by the Committee of Bar Examiners, unless proof of passage within the prior three years is provided. Proof of passage shall establish, by clear and convincing evidence, that petitioner possesses the requisite present ability and learning in the general law.

Eff. September 9, 1996.

Source: Rule 662 (substantially revised), but see also TRP 662.

**RULE 662. EARLIEST TIME FOR FILING  
REINSTATEMENT PETITION;  
PETITION TO SHORTEN TIME**

**[Remains in effect until further Supreme Court Order]**

- (a) After resignation without charges pending, a first or subsequent petition for reinstatement may be filed at any time.
- (b) Except as provided in the order of disbarment, no petition for reinstatement shall be filed within five (5) years after the effective date of the petitioner's disbarment or interim suspension following criminal conviction, or the filing date of the petitioner's resignation with charges pending, whichever occurred earliest.
- (c) A subsequent petition for reinstatement following disbarment or resignation with charges pending shall not be filed earlier than two years after the effective date of an adverse decision upon a prior petition, unless a shorter period is ordered by the Court for good cause.

Eff. January 1, 1995

Source: TRP 662 (Substantially revised).

**RULE 663. INVESTIGATION AND DISCOVERY**

- (a) For one hundred twenty (120) days from the filing of the petition with the Court, the Office of the Chief Trial Counsel shall investigate the petition to determine whether the petition will be opposed. For good cause, the investigation period may be extended by the Court.
- (b) No later than twenty (20) days after the end of the investigation period, the Office of the Chief Trial Counsel shall file with the Court and serve a response to the petition which shall state, as to each of the issues set forth in rule 665(a) and (b), whether it opposes the petition. If the petition is opposed, the Office of the Chief Trial Counsel shall set forth in its response a statement of the grounds upon which the petition is opposed.
- (c) Discovery may be conducted after the end of the investigation period pursuant to rules 180-189, provided that: (1) formal discovery shall be completed within one hundred twenty (120) days after the end of the investigation period unless such time is extended by the Court, and (2) all time limits set forth in rule 182 shall be computed from the end of the investigation period rather than from the service or due date of the responsive pleading.

Eff. January 1, 1995. Revised: July 1, 2004.  
Source: TRP 664 (substantially revised).

**RULE 664. NOTICE OF HEARING; PUBLICATION**

The Clerk shall serve notice of the hearing on the parties. The Office of the Chief Trial Counsel may publish the fact that a petition for reinstatement has been filed with the State Bar Court identifying the petitioner and other relevant information identifying the proceeding.

Eff. January 1, 1995.  
Source: TRP 665 (substantially revised).

**RULE 665. BURDEN OF PROOF**

- (a) In order to be eligible for reinstatement, a petitioner shall, with any petition for reinstatement, show proof of passage of a professional responsibility examination after the effective date of

the petitioner's disbarment or resignation but not more than one year before the filing of the petition for reinstatement.

- (b) A decision recommending reinstatement shall be based upon clear and convincing evidence establishing each of the following: (1) rehabilitation; (2) present moral qualifications for reinstatement, and (3) present ability and learning in the general law.
- (c) A petitioner who resigned without charges pending is required to establish all of the elements set forth in paragraph (b) of this rule except rehabilitation, and may pass the professional responsibility examination required of applicants for admission.
- (d) The Court may require a petitioner who fails to make an affirmative showing of sufficient present ability and learning in the general law to demonstrate such ability and learning by passing one of the California general bar examinations required of applicants for admission, to be taken within two years thereafter. An order requiring a petitioner to take such examination shall, in and of itself, constitute sufficient qualification to take such examination within the time specified in the order upon payment of the required fee. The petitioner shall file and serve proof of passage of any required general bar examination and shall file therewith a declaration either stating that there have been no changes to the information provided in the petition for reinstatement, or stating the nature of any such changes. Within twenty (20) days of service of the declaration, or as otherwise ordered by the Court, the Office of the Chief Trial Counsel may move to reopen based on issues raised by the declaration, or on the basis of newly discovered evidence or events occurring subsequent to the hearing.

Eff. January 1, 1995. Revised: July 1, 1997.  
Source: TRP 667-668 (substantially revised).

**RULE 666. INAPPLICABLE RULES**

The following rules shall not apply in a reinstatement proceeding:

- (a) Rules which by their terms apply only to disciplinary proceedings or to other specific proceedings, and
- (b) Rules 200-210 (default; obligation to appear at trial) and rules 215-217 (admission of certain evidence).

Eff. January 1, 1995.  
Source: New (but see TRP 666).

## I. MORAL CHARACTER PROCEEDINGS

### RULE 680. SCOPE

These rules apply to proceedings before the State Bar Court to determine whether an applicant for admission to the practice of law in California possesses good moral character within the meaning of Business and Professions Code section 6060(b) and rule X of the Rules Regulating Admission to Practice Law in California.

Eff. January 1, 1995.  
Source: TRP 830.

### RULE 681. COMMENCEMENT OF PROCEEDING; TIME FOR FILING

Any applicant who receives an adverse moral character determination by the Committee of Bar Examiners concerning the applicant's moral character pursuant to rule X of the Rules Regulating Admission to Practice Law in California may file an application for initiation of a moral character proceeding and hearing. The application and supporting documents shall be filed within sixty (60) days of service of the notice of adverse moral character determination by the Committee of Bar Examiners and shall be accompanied by a copy of the notice of adverse moral character determination, the applicable filing fee, and proof of service upon the Committee of Bar Examiners and the Office of the Chief Trial Counsel. Service of the application and supporting documents shall be made pursuant to the rule for service of initial pleadings (rule 60).

Eff. January 1, 1995.  
Source: TRP 831.

### RULE 682. RESPONSE

A response to the application shall be filed within one hundred twenty (120) days of service of the application or within such time period as may be granted by the Court for good cause. The response shall include a statement of the grounds upon which the application is opposed.

Eff. January 1, 1995.  
Source: New.

### RULE 683. ABATEMENT OF PROCEEDING

- (a) Upon motion by any party, or upon the Court's motion after notice to the parties, the Court may order a proceeding under these rules abated for such time and upon such terms as it deems proper. Abatement of a proceeding stays the proceeding in the State Bar Court and tolls all time limitations in the State Bar Court proceeding, except that upon motion, and for good cause shown, the Court may order perpetuation of evidence. Abatement of a proceeding under this rule does not toll or extend the time limitation set forth in rule IX of the Rules Regulating Admission to Practice Law in California. Abatement under this rule is not intended as a substitute for the program of abeyance agreements administered by the Committee of Bar Examiners under the Rules Regulating Admission to Practice Law in California nor shall a proceeding be abated or continued to allow a party to undertake and/or pass the California Bar Examination before determining the merits of the proceeding. Other forms of relief, such as continuances of trial and the withdrawal of an application, are preferred to abatement under this rule and shall be granted in lieu of abatement unless the Court determines that no other remedy is adequate to address the issues raised by the party seeking abatement.
- (b) In determining a motion pursuant to this rule, the Court may consider any relevant factor, including the following:
  - (1) any prejudice to a party which may result if the proceeding is abated;
  - (2) any prejudice to a party which may result if the proceeding is not abated;



- (3) the extent to which the proceeding before it would probably be delayed by awaiting the outcome of a related proceeding;
  - (4) the extent to which the proceeding before it would probably be expedited or aided, as to the determination of a material issue, by awaiting evidence to be adduced in a related proceeding or by awaiting the outcome of a related proceeding;
  - (5) the extent to which evidence may be unavailable in the State Bar Court proceeding because of any delay occasioned by withholding further action; and
  - (6) the extent to which parties, witnesses or documents may be unavailable or unable to participate in the State Bar Court proceeding for reasons beyond the parties' control.
- (c) For purposes of this rule, a "related proceeding" is any civil, criminal, administrative, or licensing proceeding involving conduct by the applicant which is or is likely to be an issue in the proceeding before the Court.
- (d) Review of a hearing judge's ruling on a motion under this rule may be sought pursuant to rule 300.

Eff. January 1, 1995.  
Source: New.

#### **RULE 686. EFFECT OF STATE BAR COURT DECISION**

The decision of the hearing judge, or the decision of the Review Department if review is requested, shall be the final State Bar Court decision in the proceeding, and, unless a petition for review by the California Supreme Court is granted, shall be binding upon the applicant, the Office of the Chief Trial Counsel, and the Committee of Bar Examiners.

Eff. January 1, 1995.  
Source: TRP 836, first paragraph (substantially revised).

#### **RULE 687. INAPPLICABLE RULES**

The following rules shall not apply in a moral character proceeding:

- (a) Rules which by their terms apply only to disciplinary proceedings or to other specific proceedings, and
- (b) Rules 116-118 (abatement); rules 200-210 (default; obligation to appear at trial); and rules 215-217 (admission of certain evidence).

Eff. January 1, 1995.  
Source: New (but see TRP 835).

### **J. FEE ARBITRATION AWARD ENFORCEMENT PROCEEDINGS**

#### **RULE 700. NATURE OF PROCEEDING; DEFINITIONS**

- (a) These rules apply to proceedings for the enforcement of fee arbitration awards pursuant to Business and Professions Code section 6203(d).
- (b) For purposes of rules 700–711, the following definitions supplement those of Title I, rule 2:
  - (1) "Arbitration award" means an award issued in a fee arbitration proceeding pursuant to Business and Professions Code section 6203 in which a member was ordered to pay a refund to a client and the award is binding or has become binding by operation of law or has become a judgment either after confirmation under Business and Professions Code section 6203(c) or after trial after arbitration under section 6204.
  - (2) "Award debtor" means a member ordered to pay a refund to a client pursuant to an arbitration award.
  - (3) "Client" means a client or former client of a member to whom the member has been ordered to pay a refund pursuant to an arbitration award.

- (4) "Inactive enrollment motion" means a motion to place an award debtor on involuntary inactive enrollment pursuant to Business and Professions Code section 6203(d).
- (5) "Presiding Arbitrator" means the person responsible for supervising arbitrators hearing State Bar mandatory fee arbitration cases pursuant to Business and Professions Code sections 6200 et seq., or his or her designee.

Eff. January 1, 1995. Revised: January 1, 1996.  
Source: New.

#### **RULE 701. INITIAL PLEADING; SERVICE**

- (a) A proceeding under this chapter shall be commenced by the filing by the Presiding Arbitrator of an inactive enrollment motion. The inactive enrollment motion shall be accompanied by a certified copy of the arbitration award and by such declarations and exhibits as are necessary to establish that the statutory requirements for involuntary inactive enrollment pursuant to Business and Professions Code section 6203(d) are met. The inactive enrollment motion shall contain the following notice in bold-face type: "NOTICE: If you fail to file a timely response to this motion requesting a hearing, you will waive your right to a hearing regarding your involuntary inactive enrollment."
- (b) The Presiding Arbitrator shall serve the inactive enrollment motion and supporting documents on the award debtor pursuant to rule 60 (service of initial pleading).
- (c) Service of subsequent pleadings on the award debtor shall be made pursuant to rule 61 (service of subsequent pleadings). The award debtor shall serve the Presiding Arbitrator pursuant to rule 61 at the address shown on the inactive enrollment motion.

Eff. January 1, 1995.  
Source: New.

#### **RULE 702. RESPONSE; FAILURE TO FILE RESPONSE; AMENDMENT OR SUPPLEMENT TO INITIAL PLEADING**

- (a) Any response by the award debtor to the inactive enrollment motion shall be filed and served within ten (10) days of service of the inactive enrollment motion. The response shall be supported by one or more declarations, and exhibits, if any, setting forth the factual basis for the award debtor's contentions in response to the motion.
- (b) If the award debtor does not file and serve a response to the inactive enrollment motion, and if it appears to the Court from the motion and supporting documents that the statutory requirements for involuntary inactive enrollment are satisfied, the Court shall forthwith file an order placing the award debtor on involuntary inactive enrollment. Unless otherwise ordered, the order shall be effective five (5) days after its service.
- (c) If a response is filed, or if the Court denies the motion notwithstanding the lack of any response, the Presiding Arbitrator may file an amendment or supplement to the inactive enrollment motion within five (5) court days from service of the response or of the Court's order denying the motion.

Eff. January 1, 1995.  
Source: New.

#### **RULE 703. WITHDRAWAL OF MOTION**

If the award debtor files a response to the inactive enrollment motion stating (a) that the arbitration award has been paid in full, or (b) that the award debtor is willing to agree to and comply with a payment plan satisfactory to the client or the Presiding Arbitrator, the Presiding Arbitrator may withdraw the inactive enrollment motion.

Eff. January 1, 1995.  
Source: New.

**RULE 704. REQUEST FOR HEARING; WAIVER OF HEARING**

If the award debtor files a timely response to the inactive enrollment motion requesting a hearing, a hearing shall be set by the Court on not less than twenty (20) days notice. Failure of the award debtor to file a timely response requesting a hearing shall constitute a waiver of the right to a hearing.

Eff. January 1, 1995.

Source: New.

**RULE 705. BURDEN OF PROOF**

In proceedings on an inactive enrollment motion under these rules:

- (a) The Presiding Arbitrator shall have the burden to show by clear and convincing evidence either (1) that the award debtor has failed to comply with the arbitration award and has not proposed a payment plan acceptable to the client or the State Bar, or (2) that the award debtor agreed to a payment plan and has failed to make one or more payments required by such payment plan, and
- (b) The award debtor shall have the burden to show by clear and convincing evidence: (1) that he or she is not personally responsible for making or ensuring payment of the arbitration award; (2) that he or she is unable to pay the arbitration award or the payments due under a previously agreed-upon payment plan; or (3) that he or she has proposed, and agrees to comply with, a payment plan which the State Bar unreasonably rejected as unsatisfactory.

Eff. January 1, 1995.

Source: New.

**RULE 706. DISCOVERY.**

There shall be no discovery in a proceeding under these rules except to the extent permitted by the Court for good cause.

Eff. January 1, 1995.

Source: New.

**RULE 707. HEARING PROCEDURE; EVIDENCE**

If a hearing is held:

- (a) The issues shall be limited to whether the award debtor:
  - (1) Has failed to comply with the arbitration award or with any previously agreed-upon payment plan;
  - (2) Has proposed a payment plan acceptable to the client or the State Bar, or which the State Bar unreasonably rejected as unsatisfactory;
  - (3) Is personally responsible for making or ensuring payment of the arbitration award, and/or
  - (4) Is unable to pay the arbitration award or any payments due under a previously agreed-upon payment plan.
- (b) The declarations submitted in support of and in response to the inactive enrollment motion shall be admitted in evidence, subject to appropriate objection, as the direct testimony of the respective declarants.
- (c) The party which filed a declaration shall produce the declarant for cross-examination at the hearing if an opposing party so requests in a pleading filed and served no later than ten (10) days prior to the hearing, or, if the declaration was filed pursuant to rule 702(c), no more than three (3) court days from service of the declaration.

Eff. January 1, 1995.

Source: New.

**RULE 708. RULING ON MOTION; COSTS**

- (a) The Court shall issue a written order on the inactive enrollment motion, stating its reasons therefor, and making findings on any disputed factual issues.
- (b) If the order grants the motion, then:
  - (1) Unless otherwise ordered, the order shall be effective five (5) days after service, and

(2) Upon submission by the Presiding Arbitrator of a bill of costs, the Court shall award reasonable costs to the State Bar pursuant to Business and Professions code section 6203(d)(3). For the purpose of this rule, "reasonable costs" shall include all expenses paid by the State Bar which would qualify as taxable costs recoverable in civil proceedings, plus the amount which the Discipline Committee shall from time to time determine to be the reasonable administrative costs to the State Bar and the Court of processing inactive enrollment motions under these rules. Relief from costs may be sought pursuant to rule 282.

(c) If the Court finds that the State Bar unreasonably declined to approve a payment plan proposed by the award debtor, the Court may deny the motion and order the award debtor to comply with a payment plan satisfactory to the Court.

Eff. January 1, 1995.  
Source: New.

#### **RULE 709. REVIEW**

- (a) A ruling by a hearing judge on an inactive enrollment motion under these rules shall be subject to review under rule 300.
- (b) An order granting an inactive enrollment motion will not be stayed pending review unless ordered by the Court pursuant to rule 300(h).

Eff. January 1, 1995.  
Source: New.

#### **RULE 710. TERMINATION OF INACTIVE ENROLLMENT**

When the award debtor has paid the arbitration award in full, as well as any costs and/or penalties assessed as a result of the award debtor's failure to comply, the award debtor may move to terminate an involuntary inactive enrollment ordered under these rules. The motion shall be accompanied by one or more declarations and by proof establishing such payment and shall

be served on the Presiding Arbitrator, who shall have ten (10) court days from such service to respond. Upon the filing of the Presiding Arbitrator's response or the expiration of the time to file the response, the Court shall promptly issue an order on the motion. If the Court finds that the arbitration award and any costs and/or penalties have been paid, it shall terminate forthwith any involuntary inactive enrollment ordered under this chapter.

Eff. January 1, 1995.  
Source: New.

#### **RULE 711. INAPPLICABLE RULES**

The following rules shall not apply in a proceeding on an inactive enrollment motion under these rules:

- (a) Rules which by their terms apply only to disciplinary proceedings or to other specific proceedings, and
- (b) Rules 104(a) and 104(c) (amendment of initial pleading); rule 116 (abatement); rules 150-189 (subpoenas and discovery); rules 200-212 (default; obligation to appear at trial; pretrial; notice of trial); rules 215-217 (admission of certain evidence); rules 301-308 (review).

Eff. January 1, 1995.  
Source: New.

### **DIVISION VIII- SPECIFIC PROCEEDINGS**

#### **K. PILOT PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND/OR MENTAL HEALTH ISSUES**

##### **RULE 800. PURPOSE OF PILOT PROGRAM; AUTHORITY**

Consistent with the intent of the Legislature expressed in Business and Professions Code section 6230, et seq., these rules apply to proceedings before the State Bar Court in which a respondent is identified as having a substance abuse or mental health issue and is seeking to participate in or has been accepted to partici-



pate in the State Bar Court's Pilot Program for Respondents with Substance Abuse and/or Mental Health Issues ("Pilot Program").

Eff. September 1, 2002.  
Source: New

**RULE 801. ELIGIBILITY TO APPLY FOR PARTICIPATION IN PILOT PROGRAM**

- (a) At any time following the commencement of a proceeding in the State Bar Court, at the request of the respondent, the Office of the Chief Trial Counsel or on the court's own motion, a respondent may be referred to a judge who has been designated by the Presiding Judge as a Pilot Program Judge to determine the respondent's eligibility for participation in the Pilot Program.
- (b) Prior to the commencement of a proceeding in the State Bar Court, a judge assigned to conduct an Early Neutral Evaluation Conference pursuant to rule 75 may refer a respondent to a Pilot Program Judge to determine the respondent's eligibility for participation in the Pilot Program. Additionally, either the Office of the Chief Trial Counsel or the respondent may request the Court to make a referral to a Pilot Program Judge for such evaluation.

Eff. September 1, 2002. Revised: August 1, 2003.  
Source: New

**RULE 802. ACCEPTANCE FOR PARTICIPATION IN PILOT PROGRAM.**

- (a) Acceptance of a respondent for participation in the Pilot Program shall be at the discretion of the Pilot Program Judge but shall be contingent upon the respondent's acceptance into the State Bar's Lawyer Assistance Program and upon such additional conditions as the Pilot Program Judge may impose, including but not limited to, a stipulation as to facts and conclusions of law in the pending disciplinary proceeding that is agreed upon and signed by the respondent and the Office of the Chief Trial Counsel and the respondent's written agreement to the court's terms and conditions for his or her participation in the Pilot Program.

- (b) Unless otherwise agreed by the parties, in the event the respondent is not accepted into the Pilot Program or declines to sign the written agreement regarding the terms and conditions of his or her participation in the Pilot Program, any stipulation as to facts and conclusions of law signed by the parties in the pending disciplinary proceeding and entered into as a condition for participation in the Pilot Program shall be rejected and shall not be binding upon either the respondent or the Office of the Chief Trial Counsel.

Eff. September 1, 2002.  
Source: New

**RULE 803. DEGREE OF DISCIPLINE; DEFERRAL OF IMPOSITION**

- (a) If a respondent seeking to participate in the Pilot Program has entered into a stipulation as to facts and conclusions of law in the pending disciplinary proceeding and has agreed to or has fulfilled all of the other requirements identified by the Pilot Program Judge as conditions for the respondent's participation in the Program, the Pilot Program Judge shall provide the respondent with a written statement regarding (1) the disposition that will be implemented or recommended to the Supreme Court in the event that the respondent successfully completes the Pilot Program; and (2) the disposition that will be implemented or recommended to the Supreme Court, based upon the stipulated facts and conclusions of law, if the respondent does not successfully complete the Pilot Program. Depending upon the extent and severity of the respondent's stipulated misconduct, including the degree of harm suffered by his or her client(s), the disposition implemented or recommended following successful completion of the Pilot Program may range as low as the dismissal of the charges or proceeding and, as a result of termination from the Pilot Program, may range as high as disbarment.

- (b) If the respondent is accepted for participation in the Pilot Program, the stipulation as to facts and conclusions of law shall not be filed and the proposed disposition shall not be implemented or transmitted as a recommendation to the Supreme Court until the respondent either successfully completes the Pilot Program or is terminated from the Program.

Eff. September 1, 2002. Revised: August 1, 2003.  
Source: New

#### **RULE 804. TERM OF PARTICIPATION IN PILOT PROGRAM**

In order to successfully complete the Pilot Program, a respondent must participate in the Program for a term of 36 months from the date of acceptance in the Program, provided that, with earned incentives as specified in the written agreement signed by the respondent, the respondent may complete the Pilot Program in a minimum of 18 months. No respondent may successfully complete the Pilot Program without the certification of the Lawyer Assistance Program that he or she has been substance-free for a period of at least one year or, in the case of a respondent with mental health issues, without a recommendation from a mental health professional that is satisfactory to the Pilot Program Judge.

Eff. September 1, 2002.  
Source: New

#### **RULE 805. CONFIDENTIALITY**

A respondent's participation in the Pilot Program and the fact that the respondent has either successfully completed the Program or has been terminated from the Program shall be public. All information concerning the nature and extent of the respondent's treatment is absolutely confidential and shall not be disclosed to the public absent an express written waiver by the respondent.

Eff. September 1, 2002.  
Source: New

#### **RULE 806. REVIEW**

No decision or order of the Pilot Program Judge may be reviewed by the State Bar Court Review Department except as follows:

- (a) The decision of the Pilot Program Judge to admit the respondent to the Pilot Program or to deny the respondent admittance to the Pilot Program shall be reviewable only pursuant to Rule 300.
- (b) The decision of the Pilot Program Judge to terminate a respondent from the Pilot Program or to deny the State Bar's motion to terminate the respondent from the Pilot Program shall be reviewable only pursuant to Rule 300.

Eff. September 1, 2002.  
Source: New

#### **Rule 807. SUNSET PROVISION**

Rules 800 through 806 shall remain in effect only until October 1, 2004, and as of that date are repealed, unless otherwise those rules are re-adopted or amended prior to that date or the sunset date provided in this Rule is extended.

Eff.: December 7, 2002. Revised: January 1, 2004.  
Source: New

### **TITLE III. GENERAL PROVISIONS**

#### **DIVISION I. STATE BAR COURT**

##### **STATE BAR NOTE**

Formerly TRP Division II The State Bar Court, Chapter 1 General Provisions, Chapter 2 Executive Committee, Chapter 3 Presiding Referee. TRP 102 Computation of Time, TRP 103 Hearing Department, TRP 104 Referee's Assignments, TRP 104.5 Assignment of Judges Pro Tempore, TRP 107 Disposition of Pending Matters, TRP 108 Quorum, TRP 109 Transitional Provisions re the State Bar Court are superseded by Title II. TRP 106 Non-Compensation: Exception is superseded by Title III, rule 2201, Special Deputy Trial Counsel, Appointment and Authority.

**RULE 1000. STATE BAR COURT**

The State Bar Court is the court created pursuant to section 6086.5 of the Business and Professions Code, consisting of judges and judges pro tempore.

Eff. Sept. 1989. Revised and renumbered: November 1, 1995.  
Source: TRP 100.

**RULE 1001. DEPARTMENTS OF THE STATE BAR COURT**

The State Bar Court is organized into the following departments:

- (a) The Hearing Department, consisting of hearing judges and judges pro tempore; and
- (b) The Review Department, consisting of the presiding judge and the review judges (including, in a particular matter, any judge designated to serve under 305 (d)).

Eff. Sept. 1, 1989. Revised: January 1, 1993. Revised and renumbered: November 1, 1995.  
Source: TRP 101.

**RULE 1005. OATH**

Every member of the State Bar Court and every person appointed to serve in a similar capacity shall take an oath of office.

Eff. Sept. 1, 1989. Revised and renumbered: November 1, 1995.  
Source: TRP 105.

**RULE 1010. EXECUTIVE COMMITTEE**

- (a) The Executive Committee of the State Bar Court shall consist of no fewer than seven persons appointed by the presiding judge pursuant to subdivision (c) of section 6086.65 of the Business and Professions Code. The Executive Committee may:

- (1) Adopt rules of practice, including State Bar Court forms, for the conduct of all proceedings within the State Bar Court's jurisdiction; and
- (2) Serve in an advisory capacity to the judges of the State Bar Court.

- (b) Meetings of the Executive Committee shall be held at such times and places as are prescribed by the Executive Committee or the presiding judge.

- (c) A majority of the members of the Executive Committee then in office shall constitute a quorum for the transaction of business at a meeting and the action of a majority of the members present at such meeting shall constitute the action of the Executive Committee.

Eff. Sept. 1, 1989. Retitled: January 1, 1995. Renumbered and revised: November 1, 1995.  
Source: TRP 110, 111, 112.

**RULE 1011. COURT MEETINGS**

- (a) Notwithstanding Rule 1010, the judges of the State Bar Court may meet from time to time, as appropriate, to consider policy, operational or other matters relating to their duties and functions.
- (b) The judges of the Hearing or Review Departments may convene separately to discuss matters within their exclusive purview.

Eff. November 1, 1995.  
Source: New

**RULE 1013. PRESIDING JUDGE DUTIES**

The presiding judge shall:

- (a) Be the spokesperson for the State Bar Court;
- (b) Preside at meetings of the Executive Committee and over all meetings of the combined Review and Hearing Department judges and at all meetings of the Review Department;
- (c) Appoint such (standing or special) committees of the State Bar Court as may be advisable to assist the State Bar Court, the Executive Committee and the presiding judge in the proper performance of their respective duties;

- (d) Provide for overall supervision of calendar management and assignment of judges for all matters within the jurisdiction of the State Bar Court;
- (e) Represent the State Bar Court in the State Bar budgetary process;
- (f) Designate another member of the Review Department to act as presiding judge for Review Department functions when the presiding judge is unavailable, except as provided by rule 305(d); and
- (g) Take reasonable measures to assure the prompt disposition of matters before the judges of the State Bar Court and the proper performance of their other adjudicatory responsibilities.

Eff. Sept. 1, 1989. Retitled: January 1, 1995. Revised and renumbered: November 1, 1995.  
Source: TRP 113 (substantially revised).

#### **RULE 1014. SUPERVISING JUDGE OF THE HEARING DEPARTMENT**

A supervising judge of the Hearing Department shall be annually appointed by the presiding judge, subject to the concurrence of a majority of the judges of the Hearing Department. The supervising judge of the Hearing Department shall:

- (a) Appoint such (standing or special) committees of the Hearing Department as may be advisable to assist the Hearing Department in the proper performance of its duties;
- (b) Supervise matters internal to the Hearing Department, including calendar management and assignment of judges in accordance with the rules of practice and general orders of the presiding judge;
- (c) Preside over meetings, as appropriate, of the State Bar Court Hearing Department judges;
- (d) Perform non-Review Department functions of the presiding judge in his or her absence to the extent permitted by statute and not contrary to these rules;

- (e) Appoint an assistant supervising judge, if needed, with the concurrence of the presiding judge; and
- (f) Consult on a regular basis with the presiding judge to assure efficient functioning of the State Bar Court.

Eff. Sept. 1, 1989. Revised and renumbered: November 1, 1995.

Source: New (but see TRP 114).

#### **RULE 1015. ADJUDICATORY INDEPENDENCE**

- (a) No State Bar entity, officer, employee or agent shall interfere with the adjudicatory independence of the State Bar Court to hear and decide the matters submitted to it fairly, correctly and efficiently.
- (b) The State Bar Court shall identify and determine its priorities and the staff work necessary to support its adjudicatory responsibilities.

Eff. Sept. 1, 1989. Revised and renumbered: November 1, 1995.

Source: New (but see TRP 115).

#### **RULE 1016. ADMINISTRATIVE FUNCTIONS**

The State Bar shall provide adequate staff and facilities to support the adjudicatory functions of the State Bar Court. The Board of Governors, in consultation with the presiding judge of the State Bar Court, shall determine, in the proper exercise of its executive and fiscal authority over the State Bar, the staffing levels and facilities required to meet the State Bar Court's stated priorities and adjudicatory responsibilities. The Board of Governors shall direct the Executive Director to assign the appropriate staff and resources and to provide a process for the meaningful input of the State Bar Court judges concerning the performance of the executive and other staff assigned. The Executive Director may, after consultation with the presiding judge, designate an executive staff member to serve as the State Bar Court's administrative officer to:

- (a) Be responsive to the expressed needs and priorities of the State Bar Court;



- (b) Assure the effective functioning and efficient management of the operations and staff of the State Bar Court;
- (c) Assure compliance with State Bar policies, procedures, statutory and other mandated duties;
- (d) Consult regularly with the judges of the State Bar Court regarding the execution of these administrative responsibilities;
- (e) Aid the presiding and supervising judges in the performance of their responsibilities;
- (f) Protect the confidentiality of the State Bar Court; and
- (g) Perform other duties as are consistent with this rule.

Nothing in this rule shall preclude a State Bar Court judge from exercising appropriate control over courtroom personnel in the courtroom.

Eff. November 1, 1995.

Source: New.

#### STATE BAR NOTE

To effectuate rule 1016, the Executive Director of the State Bar has adopted the following process statement:

#### PROCESS PURSUANT TO RULE 1016, RULES OF PROCEDURE OF THE STATE BAR

As used in this process the word "Court" means the State Bar Court; the words "judges" or "judge" means the judges or a judge of the State Bar Court; the words "Administrative Officer" means the Administrative Officer of the State Bar Court; the words "Executive Director" means the Executive Director of the State Bar.

The judges shall identify and prioritize the staff work they perceive necessary to support the Court's adjudicatory responsibilities and accomplish its mission goals and objectives.

In consultation with the judges, the Administrative Officer shall, consistent with State Bar policies, cause the Court's mission, goals, objectives and priorities to be reflected in performance expectations for the staff assigned to support the Court.

The Administrative Officer shall consult with the judges to assure that the Court's priorities are being met to the extent possible within the resources allocated to support the Court.

Periodically, and not less than annually, the Administrative Officer shall poll each judge regarding the performance of the staff assigned to support the Court. Any concerns or problems identified shall be addressed by the Administrative Officer. Any concerns or problems which the judges believe are not adequately addressed by the Administrative Officer may be presented to the Executive Director.

The Executive Director, in consultation with the judges and the Administrative Officer, shall establish performance expectations for the Administrative Officer.

Periodically, and not less than annually, the Executive Director shall solicit the opinions of each judge regarding the performance of the Administrative Officer. Any concerns or problems identified shall be addressed by the Executive Director.

Each judge and the Court as a whole are encouraged to communicate to the Administrative Officer with regard to any member of the State Bar Court staff (including the Administrative Officer), or to the Executive Director with regard to the Administrative Officer, more frequently as needed to assure appropriate support.

Source: New.

## DIVISION II. CHIEF TRIAL COUNSEL

#### STATE BAR NOTE

Formerly TRP Division III General Provisions and Division IV Provisions Applicable to Various Proceedings. Division III General Provisions, Chapter 1 Address Requirements of Members and Former Members, TRP 201 is deleted. Chapter 5 Service and Filing of Papers, TRP 240-243, Chapter 6 Venue, TRP 250-252, Chapter 7 Consolidation and Transfer, TRP 262, Chapter 8 Transcripts, TRP 271, Chapter 10 Stays, TRP 350-352, Chapter 11 Stipulation and Terminations, TRP 401-415, Chapter 12 Review, TRP 450-455, Chapter 13 Costs of Disciplinary Proceedings Authorized by 1986 Cal. Stats., C. 622, TRP 460-464 are superseded by Title II. For notes regarding TRP Division IV Provisions Applicable to Various Proceedings, see new Division IV Provisions Applicable to Various Proceedings below.

## CHAPTER 1. CHIEF TRIAL COUNSEL

#### STATE BAR NOTE

Formerly TRP Division III General Provisions, Chapter 2, State Bar Examiners and Investigations.

### RULE 2101. AUTHORITY OF THE OFFICE OF THE CHIEF TRIAL COUNSEL

The Board of Governors of the State Bar delegates to the Office of the Chief Trial Counsel exclusive

jurisdiction to review inquiries and complaints, conduct investigations and determine whether to file notices of disciplinary charges in the State Bar Court, except as provided in Title III, rules 2201 and 2502, and Title II, rules 150-157.

Eff. January 1, 1996.

Source: New (but see TRP 210, 211).

## CHAPTER 2. SPECIAL DEPUTY TRIAL COUNSEL

### RULE 2201. APPOINTMENT AND AUTHORITY

- (a) The Chief Trial Counsel or designee may appoint one or more Special Deputy Trial Counsel when an inquiry, complaint or investigation is received against the following:
  - (1) A member employed by the State Bar of California;
  - (2) An attorney member of the Board of Governors;
  - (3) An attorney member of the governing board of any other entity of the State Bar;
  - (4) A member who has a current or recent personal, financial or professional relationship to the State Bar, its employees, a member of the Board of Governors, or in other appropriate circumstances to avoid the appearance of any impropriety.
- (b) A Special Deputy Trial Counsel shall have all of the powers and duties of the Chief Trial Counsel and shall act entirely in his or her place or stead with regard to such an inquiry, complaint or investigation. A Special Deputy Trial Counsel may be removed by the Chief Trial Counsel only for good cause or any other condition that substantially impairs the performance of such Special Deputy Trial Counsel's duties.
- (c) A Special Deputy Trial Counsel must be an active member of the State Bar, but may not be an employee of the State Bar, a member of the Board of Governors, or a Judge Pro Tempore of the State Bar Court.
- (d) A Special Deputy Trial Counsel shall not receive compensation for services unless the Chief Trial Counsel has contracted in advance with that Special Deputy Chief Trial Counsel to receive compensation.
- (e) A Special Deputy Trial Counsel shall comply with the written or other established policies of the State Bar of California and the Office of the Chief Trial Counsel, except to the extent that compliance would be inconsistent with the purposes of this rule.
- (f) A Special Deputy Trial Counsel may request that the Chief Trial Counsel or designee authorize the payment of reasonable expenses and for investigative, administrative and legal support. The Chief Trial Counsel or designee shall have discretion to determine the amount of financial, investigative, administrative and legal assistance to be provided.
- (g) The Chief Trial Counsel or designee, shall conduct a preliminary review to determine if the member described in paragraph (a) may have committed a criminal act(s), professional misconduct, or a violation of the State Bar Act or California Rules of Professional Conduct. In determining whether grounds exist to conduct an inquiry or investigation, the Chief Trial Counsel or designee shall consider:
  - (1) The specificity of the information received; and
  - (2) The credibility of the source of the information.
- (h) The Chief Trial Counsel shall determine whether grounds to conduct an inquiry or investigation exist, not later than fifteen (15) days after the information is first received.
  - (1) If within that fifteen (15) day period, the Chief Trial Counsel or designee determines that the information is not specific or is not from a credible source, then the Chief Trial Counsel or designee shall close the matter.

- (2) If within that fifteen (15) day period, the Chief Trial Counsel or designee determines that the information is specific and from a credible source, the Chief Trial Counsel or designee shall, upon making that determination, appoint a Special Deputy Trial Counsel to conduct an inquiry, investigation or other proceeding as necessary with respect to that information.
- (3) If the Chief Trial Counsel or designee is unable to determine if the information is specific and from a credible source, the Chief Trial Counsel or designee shall, at the end of the fifteen (15) day period, appoint a Special Deputy Trial Counsel to conduct an inquiry, investigation or other proceeding as necessary with respect to that information.
- (i) If the information received under this rule involves the Chief Trial Counsel or a person with whom the Chief Trial Counsel has a current or recent personal, financial or professional relationship, the Chief Trial Counsel shall recuse himself or herself. The matter shall be referred to the Chair of the Board Committee on Discipline, who shall appoint a subcommittee to conduct a preliminary review, pursuant to paragraphs (g) and (h) of this rule. Following its review, the subcommittee may appoint a Special Deputy Trial Counsel to conduct an inquiry, investigation or prosecution of the Chief Trial Counsel.
- (j) In matters involving members employed by the Office of the Chief Trial Counsel, the Chief Trial Counsel or the Special Deputy Trial Counsel shall submit reports to a subcommittee appointed by the Chairperson of the Board Committee on Discipline, as requested, covering the number, nature and disposition of such complaints.

Eff. January 1, 1996.  
Source: TRP 106, 212.

## CHAPTER 3. CONFIDENTIALITY

### STATE BAR NOTE

Formerly TRP Division III General Provisions, Chapter 3 Confidentiality of State Bar Court Records and Proceedings. With respect to proceedings pending in the State Bar Court, TRP 220 Confidentiality of Investigations and Formal Proceedings, TRP 221 Confidentiality of Information, TRP 225 Public Hearings, TRP 226 Information Available to Member, TRP 228 State Bar Court Access to Disciplinary Records During Consideration of Client Security Fund Application, TRP 229 Responses to Inquiries are superseded by Title II. With respect to State Bar Court files and records in proceedings pending in the State Bar Court, TRP 223 Records, is superseded by Title II. TRP 222 Advising Complainant is superseded by Title III rule 2403 Complainant.

### RULE 2301. RECORDS

Except as otherwise provided by law or by these rules, the files and records of the Office of the Chief Trial Counsel are confidential.

Eff. January 1, 1996.

Source: TRP 223 (substantially revised).

### RULE 2302 DISCLOSURE OF INFORMATION

- (a) Except as otherwise provided by law or these rules, information concerning inquiries, complaints or investigations is confidential.
- (b) A member whose conduct is the subject of an inquiry, complaint or investigation may waive confidentiality.
- (c) Notwithstanding the provisions of paragraph (b), the Chief Trial Counsel or designee or the President, may decline to waive confidentiality regarding an inquiry, complaint or investigation, if it is determined that an ongoing investigation may be substantially prejudiced by a public disclosure before the filing of a notice of disciplinary charges.
- (d)(1) The Chief Trial Counsel or designee or the President of the State Bar, after private notice to the member, may waive confidentiality concerning a complaint(s) or investigation(s) for the protection of the public when the necessity for disclosing information outweighs the necessity for preserving confidentiality, including but not limited to the following circumstances:

- (A) A member or non-member has caused, or is likely to cause, harm to client(s), the public, or to the administration of justice, such that the public or specific individuals should be advised of the nature of the allegations. The following additional factors shall be considered in making this determination:
- (i) The maintenance of public confidence in the discipline system's exercise of self-regulation;
  - (ii) The member's current membership status;
  - (iii) The record of prior discipline of the member;
  - (iv) The potential for the imposition of a substantial disciplinary sanction;
  - (v) The existence of any other public matters;
  - (vi) The status of the complaint or investigation;
  - (vii) The waiver of confidentiality by the member;
  - (viii) The gravity of the underlying allegations; and
  - (ix) The member's cooperation with the State Bar.
- (B) A member or non-member has committed criminal acts or is under investigation by law enforcement authorities;
- (C) A member or non-member is under investigation by a regulatory or licensing agency, or has committed acts or made omissions which may reasonably result in investigation by a regulatory or licensing agency;
- (D) The member is the subject of multiple complaints and the Office of the Chief Trial Counsel has determined not to pursue all of the complaints. The Office of the Chief Trial Counsel may inform complainants whose allegations have not been pursued of the status of the other investigations or the manner in which the other complaint(s) against the member have been resolved, e. g., by directional letter, warning letter, admonition, agreement in lieu of discipline, or private reproof; or
- (2) If the Chief Trial Counsel, for any reason, declines to exercise the authority provided by paragraph (d)(1), or disqualifies himself or herself from acting under paragraph (d)(1), he or she shall appoint a designee to act in his or her place.
  - (3) After a waiver of confidentiality pursuant to paragraph (d)(1)(A) above, the Chief Trial Counsel or designee, may define the scope of information disseminated and may limit the disclosure of information to specified individuals or entities.
  - (4) Except as otherwise provided by law or these rules, if the Chief Trial Counsel or designee or the President waives confidentiality pursuant to paragraph (d)(1) through (d)(3), the Chief Trial Counsel, the President or designee may issue, if appropriate, one or more public announcements and may disclose information concerning a complaint(s) or investigation(s) involving a member(s) or non-member(s), which includes a statement of the status or disposition of the complaint(s) or investigation(s); clarifying the procedures involved; and defending the right of the member(s) to a fair hearing on the allegations of misconduct.
- (e) Notwithstanding the provisions of paragraph (d), and without waiving confidentiality, the Chief Trial Counsel, in the exercise of discretion, may disclose documents and information concerning disciplinary inquiries, complaints and investigations to the following individuals or entities:



- (1) To employees of the State Bar Office of the Chief Trial Counsel, the State Bar Office of General Counsel or any Special Deputy Trial Counsel;
- (2) To members of the Judicial Nominees Evaluation Commission or Review Committee as to matters concerning nominees in any jurisdiction;
- (3) To witnesses or potential witnesses in conjunction with an inquiry, complaint, investigation, or proceeding;
- (4) To other governmental agencies responsible for the enforcement of civil or criminal laws, including but not limited to information within the definitions set forth in Business and Professions Code sections 6043.5 and 6044.5;
- (5) To agencies and other jurisdictions responsible for professional licensing;
- (6) To the complainant or lawful designee;
- (7) To the member(s) who is (are) the subject of the inquiry, complaint or investigation or their counsel of record, if any;
- (8) To judges of the State Bar Court; or
- (9) To any other person or entity to the extent that such disclosure is authorized by Business and Professions Code sections 6094.5(b), 6086.11, 6086.14 or other statutory provision or any other law.

Eff. January 1, 1996.  
Source: TRP 220, 221, 224, 227.

## CHAPTER 4. INVESTIGATIONS

### STATE BAR NOTE

Formerly TRP Division IV Provisions Applicable to Various Proceedings, Chapter 1 Investigations. TRP 508 Authority to Terminate Matter is superseded by Title III, rule 2601 Closure of Inquiries, Complaints and Investigations. TRP 509 Determination as to Reasonable Cause is superseded by Title III, rule 2604 Filing Notices of Disciplinary Charges. TRP 510 Issuance of Notice to Show Cause is superseded by Title III, rule 2604 Filing Notices of Disciplinary Charges. TRP 511 Termination Without Opening Formal Proceeding is superseded by Title III, rules 2602 Dis-

position by Admonition and 2601 Closure of Inquiries, Complaints and Investigations all contained in Chapter 6 Disposition of Inquiries, Complaints, and Investigations, below.

### RULE 2401. PURPOSE OF INVESTIGATION

The purpose of an investigation is to determine whether there is reasonable cause to believe that a member of the State Bar has violated a provision of the State Bar Act or the Rules of Professional Conduct and if there is sufficient evidence to support the allegations of misconduct.

Eff. January 1, 1996.  
Source: TRP 502.

### RULE 2402. INITIATION OF INQUIRY OR INVESTIGATION

The State Bar may open an inquiry or investigation on its own accord or upon receipt of a communication concerning the conduct of a member of the State Bar.

Eff. January 1, 1996.  
Source: TRP 503.

### RULE 2403. COMPLAINANT

The Complainant is entitled to receive relevant information pursuant to the provisions of the State Bar Act or the Rules of Procedure of the State Bar of California. In matters where communications from more than one person concern the same or substantially the same underlying conduct of the member, there may be more than one complainant. The complainant may be, but is not limited to:

- (a) a current or former client;
- (b) one complaining on behalf of a current or former client;
- (c) one owed or was owed a fiduciary duty and an alleged breach of the fiduciary duty is or should be a subject of the investigation;
- (d) member of the judiciary or legal professions who alleged misconduct by the member which is or should be the subject of an investigation;

- (e) a person who has significant new information about an alleged ethical violation committed by the member affecting the professions, the administration of justice, or the public.

Eff. January 1, 1996.

Source: New.

#### **RULE 2404. COMMUNICATIONS CONCERNING THE CONDUCT OF MEMBERS**

Communications concerning the conduct of a member of the State Bar may be made to the Office of the Chief Trial Counsel at 1149 South Hill Street, Los Angeles, CA 90015-2299. Complainants may be required to present appropriate information on forms supplied by the Office of the Chief Trial Counsel.

Eff. January 1, 1996.

Source: TRP 504 (substantially revised).

#### **RULE 2406. EFFECT OF COMMUNICATION TO THE STATE BAR**

A client or former client who complains against a member thereby waives the attorney-client privilege and any other applicable privilege, as between the complainant and the member, to the extent necessary for the investigation and prosecution of the allegations.

Eff. January 1, 1996.

Source: TRP 505 (substantially revised).

#### **RULE 2407. CLOSURE FOR FAILURE TO PROVIDE ASSISTANCE**

The Office of the Chief Trial Counsel may, in its discretion, close an inquiry, investigation or complaint if the complainant fails to comply with the State Bar's reasonable requests for assistance, information, or documentation.

Eff. January 1, 1996.

Source: TRP 506 (substantially revised).

#### **RULE 2408. EFFECT OF RESTITUTION OR SETTLEMENT; UNWILLINGNESS OF COMPLAINANT TO PROCEED**

The Office of the Chief Trial Counsel may continue to investigate and, in its discretion, may

prosecute a complaint even though the complainant has asked that the complaint be withdrawn, has failed to properly cooperate with the State Bar, has compromised his or her claim or has received restitution. In exercising its discretion under this rule, the Office of the Chief Trial Counsel shall consider all relevant factors including but not limited to:

- (a) whether prosecution of the matter is necessary for the protection of the public;
- (b) whether prosecution of the matter is necessary to assure the public's confidence in the ability of the State Bar to regulate its members;
- (c) whether prosecution of the matter is likely to result in a significant level of discipline;
- (d) whether the respondent is or has been the subject of other disciplinary investigations or proceedings;
- (e) whether it appears that the member has unduly influenced the complainant's decision to request that the investigation be terminated; and/or
- (f) whether the respondent has acknowledged wrongdoing and has fully compensated the victim of the misconduct.

Eff. January 1, 1996.

Source: TRP 507 (substantially revised).

#### **RULE 2409. MEMBER'S RESPONSE TO ALLEGATIONS**

- (a) Prior to the filing of a Notice of Disciplinary Charges, the Office of the Chief Trial Counsel shall notify the member in writing of the allegations forming the basis for the complaint or investigation and shall provide the member with a period of not less than two weeks within which to submit a written explanation. Upon request, the Office of the Chief Trial Counsel shall grant the member an additional two weeks within which to submit the written explanation. Thereafter, any further extension of time for submission of the member's written explanation shall be granted only

upon written request to the Office of the Chief Trial Counsel and for good cause shown as to the specific constraints on the member's practice which are claimed to necessitate the additional time. This rule does not prohibit the Office of the Chief Trial Counsel from contacting a member by telephone for purposes of resolution of minor matters or investigation.

- (b) In response to the Office of the Chief Trial Counsel's written notification pursuant to paragraph (a), the member may provide a written response claiming any applicable constitutional or statutory privilege; however, the availability of an applicable constitutional or statutory privilege shall not excuse the member from submitting a written response to the Office of the Chief Trial Counsel to the extent necessary to identify and exercise the claimed privilege.

Eff. January 1, 1996. Revised: January 1, 2000.  
Source: TRP 508 (substantially revised).

#### **RULE 2410. COMMUNICATIONS WITH CURRENT CLIENTS OF A MEMBER**

- (a) The staff of the Office of the Chief Trial Counsel may interview the current clients of a member who is under investigation or is the subject of a disciplinary proceeding in the following limited circumstances:
- (1) with the consent of the member or counsel;
  - (2) when the client has complained against the member or has initiated contact with the State Bar; or
  - (3) to determine whether he or she is a current client of the member. The contact shall cease if it is determined that the person is a current client.
- (b) The Chief Trial Counsel or designee, may, in his or her discretion, authorize interviews of current clients of a member upon a showing of good cause in writing.

Eff. January 1, 1996.  
Source: Board of Governors Resolution of August 29, 1987 (substantially revised).

## **CHAPTER 5. SUBPOENAS AND DEPOSITIONS**

### **STATE BAR NOTE**

Formerly TRP Division III General Provisions, Chapter 9 Subpoenas and Discovery. TRP 304 Specific Rules Applicable to Member's Non-Trust Fund Financial Records or for Non-Member's Financial Records, TRP 305 Issuance of Subpoena, TRP 306 Service on Customer, TRP 307 Motion to Quash, TRP 308 Hearing on Motion to Quash, TRP 309 Review of Decision on Motion to Quash, TRP 310 Rules Applicable to Subpoenas Other than for the Purpose of Obtaining Financial Records, TRP 311 Service, TRP 312 Motion to Quash, TRP 313 Hearing on Motion to Quash, TRP 314 Review of Decision of Referee or Hearing Panel on Motion to Quash, TRP 315 Discovery in Formal Proceedings, TRP 316 Time Period for Discovery, TRP 317 Conditions Precedent to Formal Discovery, TRP 318 Depositions, TRP 319 Interrogatories and Requests for Admissions, TRP 321 Sanctions; Admissions of Facts not Denied in Request for Admissions, TRP 322 Contempt Proceeding, TRP 323 Other Depositions; Authority, TRP 324 Discovery Review, TRP 325 Protective Orders are superseded by Title II.

#### **RULE 2501. FORMS FOR SUBPOENAS**

The Office of the Chief Trial Counsel may promulgate forms for the subpoenas it issues.

Eff. January 1, 1996.  
Source: New.

#### **RULE 2502. INVESTIGATION DEPOSITIONS**

In the course of an investigation, pursuant to Business and Professions Code section 6049, subdivision (b), the Office of the Chief Trial Counsel may compel by subpoena the appearance of a witness at a deposition. The deposition shall be conducted in accordance with Code of Civil Procedure section 2025, subdivision (c) through subdivision (u), inclusive. The Office of the Chief Trial Counsel shall serve a copy of the notice of deposition upon each member whose conduct is being investigated. Such members shall have the right to appear and participate at the deposition and to seek relief from the State Bar Court pursuant to Code of Civil Procedure section 2025 subdivision (i)(1) through subdivision (5), inclusive, and subdivision (i)(8) through (i)(14), inclusive.

Eff. January 1, 1996.  
Source: New (but see TRP 323; Bus. & Prof. Code § 6049(b)).

### **RULE 2503. TRUST ACCOUNT FINANCIAL RECORDS**

(a) This rule applies to investigation subpoenas issued by the State Bar directed to financial institutions requiring production of trust account financial records of a member, in compliance with Business and Professions Code sections 6049 and 6069(a), and applies before or after the commencement of a State Bar Court proceeding.

(b) A subpoena for trust account financial records shall describe the requested records with particularity and shall be supported by a declaration showing the following:

- (1) that there is reasonable cause to believe that the financial records sought pertain to trust funds which the member must maintain in accordance with the Rules of Professional Conduct; and
- (2) that the records sought are consistent with the scope and requirements of the matter under investigation; provided, however, that the Office of the Chief Trial Counsel shall have discretion to make this determination.

Declarations shall be confidential and need not be disclosed to the State Bar Court, the member, the financial institution, or other interested parties at any time.

(c) The Office of the Chief Trial Counsel shall notify the member in writing within thirty (30) days after receiving trust account financial records from a financial institution in response to a subpoena issued pursuant to this rule. The notice shall be mailed to member's address furnished pursuant to Business and Professions Code section 6002.1 or to his or her counsel, and shall include:

- (1) a description with particularity of the financial records actually received; and
- (2) notice that the member may submit a written request for a statement of reasons for the State Bar's examination of the member's trust account financial

records within fifteen (15) days of the date of mailing of the notice.

(d) Upon timely and written request, the Office of the Chief Trial Counsel shall provide the member with a statement of the reasons for the State Bar's examination of the member's trust fund financial records.

Eff. January 1, 1996.

Source: Bus. & Prof. Code § 6069(a); TRP 301-303.

## **CHAPTER 6. DISPOSITION OF INQUIRIES, COMPLAINTS AND INVESTIGATIONS**

### **STATE BAR NOTE**

Formerly TRP Division IV Provisions Applicable to Various Proceedings, Chapter 1 Investigations. See also Title III, Division II Chief Trial Counsel, Chapter 4 Investigations, above.

### **RULE 2601. CLOSURE OF INQUIRIES, COMPLAINTS AND INVESTIGATIONS**

The Office of the Chief Trial Counsel may, in its discretion, close an inquiry, complaint or investigation. The inquiry, complaint or investigation may also be closed with the issuance of a warning letter or a directional letter or by any other appropriate manner not constituting discipline.

Eff. January 1, 1996.

Source: New (but see TRP 508).

### **RULE 2602. DISPOSITION BY ADMONITION**

(a) The Office of the Chief Trial Counsel may, in its discretion, dispose of any matter before it by an admonition to the member.

(b) The fact of the admonition shall be communicated to the complainant, if any, but otherwise shall not be public. The Office of the Chief Trial Counsel shall notify the complainant of its action. The admonition does not constitute imposition of discipline upon the member. If within two years after the date of the admonition letter, a State Bar Court proceeding is filed against the member based upon other alleged miscon-



duct, the matter terminated by admonition may be reopened. All applicable time limitations shall be tolled during the period between the issuance of the admonition and the filing of the notice of disciplinary charges.

- (c) Upon written request of the member, mailed within fifteen (15) days after service of the admonition letter, the admonition shall be set aside and the investigation may be resumed.

Eff. January 1, 1996.

Source: TRP 415 (substantially revised); see also Title II, Rule 264.

#### **RULE 2603. REOPENING INQUIRIES, INVESTIGATIONS AND COMPLAINTS**

The Office of the Chief Trial Counsel may, subject to Rule 51 [Period of Limitations], reopen an inquiry, investigation, or complaint in the following limited circumstances:

- (a) if there is new material evidence; or
- (b) if the Chief Trial Counsel or designee, in his or her discretion, determines that there is good cause.

Eff. January 1, 1996.

Source: TRP 511 (substantially revised).

#### **RULE 2604. FILING NOTICE OF DISCIPLINARY CHARGES**

The Office of the Chief Trial Counsel may file a notice of disciplinary charges if it finds in its discretion: (1) there is reasonable cause to believe that a member has committed a violation of the State Bar Act or the Rules of Professional Conduct and (2) the member has received a fair, adequate and reasonable opportunity to deny or explain the matters which are the subject of the notice of disciplinary charges.

Eff. January 1, 1996. Revised: January 1, 2000.

Source: TRP 509, 510 (substantially revised).

### **DIVISION III. OFFICE OF PROBATION**

#### **RULE 2701. OFFICE OF PROBATION**

The Office of Probation, including probation monitor referees, shall supervise members placed on probation or conditions attached to reprovals by disciplinary orders of the Supreme Court or the State Bar Court or pursuant to the terms of agreements in lieu of disciplinary prosecution.

Eff. January 1, 1996. Revised: January 1, 2004.

Source: TRP 605 (substantially revised).

#### **RULE 2702. DUTIES OF PROBATION MONITOR REFEREES**

It shall be the duty of a probation monitor referee to:

- (a) Review the applicable disciplinary order or agreement in lieu of disciplinary prosecution and any conditions of probation or reproof applicable to the member;
- (b) Promptly review with the member the conditions of probation or reproof and establish a manner and schedule of compliance and reports of compliance to the probation monitor;
- (c) Report to the Office of Probation, 1149 South Hill Street, Los Angeles, CA 90015-2299, within forty-five (45) days of receipt of the conditions of probation or reproof, upon the manner and schedule of compliance, and thereafter on a quarterly basis upon the compliance of the member;
- (d) Determine from time to time, after assessment of the relevant facts, the extent and degree of the member's compliance with the conditions of probation or reproof; and
- (e) After assessment of the relevant facts and making a determination that a member has failed to comply with the conditions of probation or reproof or agreement in lieu of disciplinary prosecution, report such failure to the Probation Unit.

Eff. January 1, 1996. Revised: January 1, 2004.

Source: TRP 614.5 (substantially revised).

### **RULE 2703. CONFIDENTIALITY OF PROBATION FILES**

Except as otherwise provided by law or by these rules, the files and records of the Office of Probation are confidential.

Eff. Revised: January 1, 2004.  
Source: New

## **DIVISION IV. DISQUALIFICATION AND MCLE CREDIT**

### **STATE BAR NOTE**

Formerly TRP Division III General Provisions, Chapter 4 Disqualification.

### **CHAPTER 1. DISQUALIFICATION**

#### **STATE BAR NOTE**

TRP 230 Referees, is superseded by Title II.

### **RULE 3101. DISQUALIFICATION OF CERTAIN PERSONS**

(a) Members of the Board of Governors, the Committee of Bar Examiners, judges, including pro tem judges, of the State Bar Court, and employees of the State Bar shall not:

- (1) during their term of office or employment, represent a party in a matter which involves the regulatory jurisdiction of the State Bar and in which the party's interests are adverse to or in conflict with the regulatory interests of the State Bar;
- (2) following expiration of their term of office or termination of employment, represent a party in a matter which involves the regulatory jurisdiction of the State Bar and in which they personally and materially participated during their State Bar service; or which involves material confidential information of the State Bar to which they had access as the result of their State Bar service;

(3) where subsection (a)(2) above does not apply, for a period of six (6) months following expiration of their term of office or termination of employment, represent a party in a matter which involves the regulatory jurisdiction of the State Bar and in which they had supervisory responsibility during their State Bar service;

(b) Members and/or other appointees of State Bar committees, sections, and/or entities, other than those identified in Section (a) above, shall not, during or after their term of office, represent a party in a matter which involves the regulatory jurisdiction of the State Bar and which involves material confidential information of the State Bar to which they had access as the result of their State Bar service.

(c) The Board of Governors, or its designee, may waive the requirements of this rule, for good cause.

(d) Nothing in this rule eliminates any disqualification under the statutory or decisional law nor any disqualification under the Rules of Professional Conduct or the Code of Judicial Conduct.

Eff. Sept. 1, 1989. Renumbered: January 1, 1996. Revised: March 2, 1996. Corrected: July 1, 1997.  
Source: TRP 231.

## **CHAPTER 2. MINIMUM CONTINUING LEGAL EDUCATION CREDIT**

### **RULE 3201. MINIMUM CONTINUING LEGAL EDUCATION CREDIT**

A member may receive Minimum Continuing Legal Education Credit upon the satisfactory completion of State Bar Ethics School, or any other remedial education courses approved by the Office of the Chief Trial Counsel, unless the member's attendance at such courses is required by a decision or order of the State Bar Court or Supreme Court.

Eff. August 26, 1995.  
Source: New.

## **DIVISION V. PROVISIONS APPLICABLE TO VARIOUS PROCEEDINGS**

### **STATE BAR NOTE**

Formerly TRP Division IV Provisions Applicable to Various Proceedings. Chapter 1B Audit of Books and Records of Member, TRP 530-534 and Chapter 7 Proceedings to Assume Jurisdiction Over Incapacitated Attorney's Law Practice, TRP 630 are deleted. Chapter 2 Formal Proceedings and Hearings, TRP 550-575, Chapter 3 Conviction Proceedings, TRP 601-603, Chapter 5 Public and Private Reprovals, TRP 615-618, Chapter 6 Rule 955 Proceedings, TRP 620-622, Chapter 8 Proceedings for Involuntary Transfer to or for Re-Transfer from Inactive Enrollment, TRP 640-649, Chapter 9 Resignation-Perpetuation of Testimony Proceedings, TRP 650-658, Chapter 10 Reinstatement Proceedings, TRP 660-669, Chapter 15 Proceedings re Involuntary Transfer to Inactive Status Upon a Finding that the Attorney's Conduct Poses a Substantial Threat of Harm to the Public or the Attorney's Clients, TRP 789-99, Chapter 15A Proceedings Re Involuntary Transfer to Inactive Status Upon a Finding that a Member has not Complied with Section 6002.1, Business and Professions Code, and Cannot be Located after Reasonable Investigation, TRP 799.1, Chapter 15B Expedited Disciplinary Proceedings in Connection with an Involuntary Inactive Enrollment Pursuant to Business and Professions Code Section 6007(c), TRP 799.5-799.8, Chapter 16 Expedited Disciplinary Proceedings Following Discipline of a Member by Another Jurisdiction, TRP 800-806, Chapter 17 Proceedings to Demonstrate Rehabilitation, Present Fitness and Learning and Ability in the Law Pursuant to Standard 1.4(c)(ii), TRP 810-826, Chapter 18 Moral Character Proceedings, TRP 830-836 are superseded by Title II. Chapter 11 Client Security Fund Proceedings, TRP 670-688, was moved to a separate publication entitled "Rules of Procedure, Client Security Fund Proceedings" effective January 1992. Chapter 12 Fee Arbitration Proceedings, TRP 690-732, was moved to a separate publication entitled "Rules of Procedure for Fee Arbitrations and the Enforcement of Awards by the State Bar of California" effective January 1991. See also, Fee Arbitration Award Enforcement Proceedings, Rules 700-711 of Title II.

## **CHAPTER 1. DISCIPLINE AUDIT PANEL**

### **STATE BAR NOTE**

Effective January 1, 2000, Business and Professions Code section 6086.11 was repealed by operation of law. As a result, the Discipline Audit Panel no longer exists and former rules 4101 through 4103, relating to the functions of the Discipline Audit Panel and its predecessor, the Complainants' Grievance Panel, have also been repealed by operation of law.

## **2. LAWYER REFERRAL SERVICE PROCEEDINGS**

### **STATE BAR NOTE**

Effective January 1, 1997, the Supreme Court approved amendments to the Rules and Regulations Pertaining to Lawyer Referral Services. As a result of those amendments, rules 4201 through 4207 of the Rules of Procedure have been repealed.

## **CHAPTER 3. LEGAL SERVICES TRUST FUND PROCEEDINGS**

### **STATE BAR NOTE**

Formerly TRP Division IV Provisions Applicable to Various Proceedings, Chapter 14 Legal Trust Fund Proceedings

### **RULE 4301. NATURE OF PROCEEDINGS**

These rules apply to hearings required by Business and Professions Code section 6224 and by the Rules Regulating Interest-Bearing Trust Fund Accounts For the Provision of Legal Services to Indigent Persons (hereinafter "Trust Fund Rules").

Eff. Sept. 1, 1989. Revised: April 17, 1993. Revised and renumbered: January 1, 1996.  
Source: TRP 775.

### **RULE 4302. INITIATION OF PROCEEDINGS**

Proceedings under these rules shall be initiated by the filing with the Clerk of the State Bar Court of a written request for hearing in accordance with the Trust Fund Rules. The applicant or recipient shall have 30 days from service of a notice of denial or termination of funding to file the request for hearing with the Clerk of the State Bar Court. The request for hearing shall be accompanied by a copy of the notice of denial or termination and shall contain an address to which all further notices to the applicant or recipient in relation to the particular proceeding may be sent. A copy of the request for hearing shall also be served by the applicant or recipient on the Legal Services Trust Fund Commission (hereinafter "Commission") at the San Francisco office of the State Bar.

Eff. Sept. 1, 1989. Revised: April 17, 1993. Revised and renumbered: January 1, 1996.  
Source: TRP 776.

**RULE 4303. APPEARANCES BY COUNSEL**

In proceedings conducted pursuant to these rules, the Commission established pursuant to rule 4 of the Trust Fund Rules and an applicant or recipient shall be represented by their respective counsel. The Commission's counsel shall be selected as determined by the Board of Governors.

Eff. Sept. 1, 1989. Revised: April 17, 1993. Renumbered: January 1, 1996.

Source: TRP 777, unchanged.

**RULE 4304. APPLICABLE RULES**

- (a) Rules which by their terms apply only to other specific proceedings shall not apply in Legal Services Trust Fund proceedings.
- (b) All other rules shall apply as nearly as may be practicable.
- (c) In such applicable rules, reference to "member" shall apply to an applicant or recipient, and references to the State Bar, "examiner", or "Office of Trials" or "Chief Trial Counsel" shall refer to the Commission and/or its counsel, as appropriate.

Eff. Sept. 1, 1989. Revised: April 17, 1993. Revised and renumbered: January 1, 1996.

Source: TRP 778, substantially revised.

**CHAPTER 4. RULES FOR THE  
ADMINISTRATION OF THE STATE  
BAR ALTERNATIVE DISPUTE  
RESOLUTION CLIENT-ATTORNEY  
MEDIATION PROGRAM (ADRCAMP)**

**STATE BAR NOTE**

As originally adopted by the Board of Governors of the State Bar of California, the following rules were under TRP Division IV Provisions Applicable to Various Proceedings, Chapter 19 and were numbered 1.0 through 7.0. These rules have now been placed in the revised Title III Division IV Provisions Applicable to Various Proceedings, Chapter 4 and renumbered accordingly.

**RULE 4401. AUTHORITY**

The Alternative Dispute Resolution Client-Attorney Mediation (ADRCAMP) Program is

established pursuant to Business and Professions Code § 6086.14.

Eff. May 14, 1994. Renumbered: January 1, 1996.

Source: TRP 840.

**RULE 4402. PURPOSE OF PROGRAM**

The ADRCAMP is designed to help resolve complaints against attorneys which do not warrant the institution of formal investigation or prosecution. It also will educate the participants about their respective responsibilities and obligations.

ADRCAMP is intended to be an effective and inexpensive alternative to formal attorney discipline utilizing early identification and intervention in dispute resolution.

Eff. May 14, 1994. Renumbered: January 1, 1996.

Source: TRP 841.

**RULE 4403. STANDARDS TO BE CONSIDERED FOR ADRCAMP REFERRAL**

- (a) The Office of the Chief Trial Counsel, in the exercise of its prosecutorial discretion, may require the participation of an attorney in the ADRCAMP after considering, but not limited to, the following factors:
  - (1) Attorney's prior discipline record including, but not limited to, any record of public discipline or informal action including Agreements in Lieu of Discipline, Admonitions, Warning Letters, Directional Letters, and reportable actions.
  - (2) The existence of open inquiries/investigations involving the same conduct.
  - (3) Disciplinary proceedings pending in the State Bar Court.
  - (4) Client willingness to participate in the program.
  - (5) Availability of ADRCAMP in county where attorney maintains principal place of practice or performed significant legal services.
  - (6) Prior efforts to resolve the dispute.



- (b) The Office of the Chief Trial Counsel shall select complaint areas by allegation type, area of the law, or fact scenario which may be considered for ADR CAMP referral.

Eff. May 14, 1994. Renumbered: January 1, 1996.  
Source: TRP 842, unchanged.

#### **RULE 4404. GUIDELINES FOR REFERRAL TO ADR CAMP**

The Office of the Chief Trial Counsel shall adopt internal procedures and guidelines for appropriate referral to ADR CAMP entity of telephone and written communications received.

Eff. May 14, 1994. Renumbered: January 1, 1996.  
Source: TRP 843.

#### **STATE BAR NOTE**

### **MINIMUM STANDARDS FOR THE MEDIATION OF CLIENT/ATTORNEY DISPUTES**

(Adopted by the Board of Governors May 14, 1994)

#### **PURPOSE**

To establish, in partnership with local bar associations, a statewide program for mediation of client/lawyer disputes which do not warrant the institution of formal investigation or prosecution. The pilot project shall include mandatory mediations referred by the Office of the Chief Trial Counsel under Business and Professions Code Section 6086.14 and voluntary mediation requests made directly to the local bar by either the lawyer or client, if both the lawyer and client agree to mediate.

Participation in the pilot program shall be limited to no more than six local bar associations for the purpose of mediating mandatory referrals from the Office of the Chief Trial Counsel. An unlimited number of bar associations may participate in the pilot program for the purpose of mediating voluntary requests from the lawyer and client. Any local bar association participating in the pilot program must have its rules of procedure, and any subsequent amendments, approved by the Board of Governors of the State Bar.

#### **MINIMUM STANDARDS**

Local bar association rules of procedure shall provide for:

1. A fair, speedy and impartial mediation procedure suitable to the circumstances;

2. Adequate training for mediators which includes classrooms and practical training with technical assistance provided by the State Bar;

3. Mediation of both mandatory and voluntary matters if the local bar is one of the associations handling mandatory meditations referred by the Office of the Chief Trial Counsel;

4. The maintenance of statistics which show:

- (a) The number of requests received;
- (b) The nature of the disputes;
- (c) Whether the request was voluntary or mandatory;
- (d) If the request was voluntary, whether it was made by the client or attorney;
- (e) The disposition of each request.

5. An appropriate procedure for parties to challenge mediators for cause;

6. An appropriate procedure for a mediator to disclose any possible conflict of interest;

7. A rule setting forth jurisdiction requirements for accepting matters for mediation (e.g. lawyer practices in the county and/or services were performed in the county);

8. A procedure for preserving the confidentiality afforded by Evidence Code Section 1152.5 and Business and Professions Code Section 6086.1(b);

9. A procedure which complies with requirements developed by the Office of the Chief Trial Counsel for transmitting the results of mandatory mediation matters to that Office;

10. A procedure covering what action, if any, will be taken in those instances where information regarding lawyer misconduct may be disclosed during a mediation; and

11. If the program elects to allow such meditations, a procedure for determining the permissible participation of non-clients having a material interest in the proceedings, such as fee guarantors, lien claimants or other in-

interested persons, subject to the consent of the client and lawyer.

## **OTHER CONSIDERATIONS**

1. The local bar association may use both lawyer and non-lawyer mediators.

### **RULE 4405. POST-MEDIATION PROCEDURES – ADRCAMP.**

After the mediation is concluded or if mediation is unsuccessful, the ADRCAMP entity shall transmit the record of the mediation to the Office of the Chief Trial Counsel. The record referred to in Business and Professions Code § 6086.14(c) shall consist of:

- (a) A Mediation Summary Report Form to be completed by the ADRCAMP entity;
- (b) A One Party Interview Form to be completed by the ADRCAMP entity if only one of the parties appears at the mediation.

Eff. May 14, 1994. Renumbered: January 1, 1996.  
Source: TRP 844.

### **RULE 4406. POST-MEDIATION PROCEDURES – OFFICE OF THE CHIEF TRIAL COUNSEL**

- (a) When mediation is concluded, the discipline matter shall be considered closed subject to reopening if the client advises the Office of the Chief Trial Counsel that the lawyer has failed to comply with the terms of the agreement.
- (b) If the attorney fails to participate in the mediation, if the parties fail to reach agreement, or if the attorney fails to perform pursuant to any agreement reached in the mediation, the Office of the Chief Trial Counsel may:
  - (1) Request the ADRCAMP to reschedule the matter for further mediation;
  - (2) Consider the matter for further investigation;
  - (3) Initiate disciplinary proceedings relating to the matter; or
  - (4) Close the inquiry.

- (c) Following the conclusion of the mediation process, the Office of the Chief Trial Counsel may contact the parties to ascertain what steps, if any, may be taken to improve the efficiency, fairness or responsiveness of the program.

Eff. May 14, 1994. Renumbered: January 1, 1996.  
Source: TRP 845.

### **RULE 4407. MATERIALS**

The Office of the Chief Trial Counsel may publish forms, procedures and guidelines to be used in implementing this program.

Eff. May 14, 1994. Renumbered: January 1, 1996.  
Source: TRP 846.

## **TITLE IV. STANDARDS FOR ATTORNEY SANCTIONS FOR PROFESSIONAL MISCONDUCT**

### **STATE BAR NOTE**

Formerly TRP Division V Standards for Attorney Sanctions for Professional Misconduct.

### **INTRODUCTION**

Since 1928, the State Bar of California has conducted attorney disciplinary proceedings as an arm of the Supreme Court of California. During this time, the fixing of the disciplinary sanction, after an attorney has been found culpable of professional misconduct, has always been ad hoc. A comprehensive set of written standards for imposing an attorney disciplinary sanction has never before existed in the state. The only guidance available to the public, courts and legal profession on this subject has been an occasional opinion of the Supreme Court.

Some Supreme Court decisions have been helpful in defining the purposes of attorney discipline chiefly, protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession. Other decisions of the Court have held that in cases of certain

serious professional misconduct by attorneys, disbarment was warranted absent clearly extenuating circumstances. However, other decisions note that there have not been standards of degree of discipline ascertainable from previous cases and that a wide variety of disciplinary sanctions have been imposed for a given offense. Although the State Bar Act permits certain sanctions to be recommended or imposed for specific professional misconduct, the State Bar Act does not provide standards for imposing a particular sanction for a particular offense.

Since 1928, the California lawyer population has increased from just a few thousand to over 175,000. Although well under one percent of California attorneys have been found to warrant disciplinary sanction each year, the Board of Governors of the State Bar believes that the process of fixing discipline for the acts of lawyer misconduct which lead to lawyer discipline should now be guided by a written set of principles. The Board of Governors hopes to achieve several important goals by issuing these standards:

- (a) to better discharge the purposes of attorney discipline as announced by the Supreme Court;
- (b) to achieve greater consistency in disciplinary sanction for similar offenses; and
- (c) to identify for the legal profession, the courts and the public the factors which may appropriately be considered for imposing discipline on an attorney and to set forth an appropriate means by which those factors may lead to the selection of a sanction in a particular case.

Eff. Jan. 1, 1986.

## PART A. GENERAL STANDARDS

### 1.1 SCOPE OF THE STANDARDS

These standards shall apply to the fixing of a final disciplinary sanction after a member of

the State Bar has been found culpable of or has acknowledged culpability of professional misconduct in a proceeding conducted by the State Bar of California. These Standards shall exclude dispositions under rule 960, California Rules of Court re resignations of attorneys, transfer to or retransfer from inactive status pursuant to section 6007, Business and Professions Code and interim suspension following conviction of crime pursuant to sections 6101-6102, Business and Professions Code.

Eff. Jan. 1, 1986.

### 1.2 DEFINITIONS

As used in these standards:

- (a) "Admonition" is a nondisciplinary sanction governed by rule 415, Rules of Procedure of the State Bar.
- (b) "Aggravating circumstance" is an event or factor established clearly and convincingly by the State Bar as having surrounded a member's professional misconduct and which demonstrates that a greater degree of sanction than set forth in these standards for the particular act of professional misconduct found or acknowledged is needed to adequately protect the public, courts and legal profession.

Circumstances which shall be considered aggravating are:

- (i) the existence of a prior record of discipline and the nature and extent of that record (see also standard 1.7);
- (ii) that the current misconduct found or acknowledged by the member evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct;
- (iii) that the member's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct; or if trust funds or trust property were involved, refusal or inability to account

- to the client or person who is the object of the misconduct for improper conduct toward said funds or property;
- (iv) that the member's misconduct harmed significantly a client, the public or the administration of justice;
- (v) that the member demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct; or
- (vi) that the member displayed a lack of candor and cooperation to any victims of the member's misconduct or to the State Bar during disciplinary investigation or proceedings.
- (c) "Disbarment" is an involuntary and permanent termination of a member's legal ability to practice law in the state accompanied by termination of membership in the State Bar and striking of the member's name from the roll of attorneys. Once effective, disbarment continues unless or until a member is reinstated by the Supreme Court following procedures set forth in rule 952(d), California Rules of Court and rules 660-669, Rules of Procedure of the State Bar. Disbarment is the most severe attorney disciplinary sanction which may be imposed.
- (d) "Member" is a member of the State Bar of California.
- (e) "Mitigating circumstance" is an event or factor established clearly and convincingly by the member subject to a disciplinary proceeding as having caused or underlain the member's professional misconduct and which demonstrates that the public, courts and legal profession would be adequately protected by a more lenient degree of sanction than set forth in these standards for the particular act of professional misconduct found or acknowledged.
- Circumstances which shall be considered mitigating are:
- (i) absence of any prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious;
  - (ii) good faith of the member;
  - (iii) lack of harm to the client or person who is the object of the misconduct;
  - (iv) extreme emotional difficulties or physical disabilities suffered by the member at the time of the act of professional misconduct which expert testimony establishes was directly responsible for the misconduct; provided that such difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse; and further provided that the member has established through clear and convincing evidence that he or she no longer suffers from such difficulties or disabilities;
  - (v) spontaneous candor and cooperation displayed to the victims of the member's misconduct and to the State Bar during disciplinary investigation and proceedings;
  - (vi) an extraordinary demonstration of good character of the member attested to by a wide range of references in the legal and general communities and who are aware of the full extent of the member's misconduct;
  - (vii) objective steps promptly taken by the member spontaneously demonstrating remorse, recognition of the wrongdoing found or acknowledged which steps are designed to timely atone for any consequences of the member's misconduct;
  - (viii) the passage of considerable time since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation; or



- (ix) excessive delay in conducting disciplinary proceedings, which delay is not attributable to the member and which delay prejudiced the member.
- (f) "Prior record of discipline" is a previous imposition or recommendation of discipline of the member as defined by rule 216, Rules of Procedure of the State Bar. It includes discipline imposed for a member's violation of probation or wilful violation of an order of the Supreme Court requiring compliance with rule 955, California Rules of Court.
- (g) "Reproval" is a censure or reprimand issued by the Supreme Court; or, pursuant to rule 270, Rules of Procedure of the State Bar, by the State Bar. The reproval may be imposed with duties or conditions pursuant to rule 956, California Rules of Court.
- (h) "Suspension" may be stayed on conditions of probation or may be an actual suspension or may be both. If "actual," a suspension is a member's legal disqualification from practicing law in the state or from holding out as entitled to practice law during the period of the actual suspension.

Eff. Jan. 1, 1986.

### 1.3 PURPOSES OF SANCTIONS FOR PROFESSIONAL MISCONDUCT

The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession. Rehabilitation of a member is a permissible object of a sanction imposed upon the member but only if the imposition of rehabilitative sanctions is consistent with the above-stated primary purposes of sanctions for professional misconduct.

Eff. Jan. 1, 1986.

### 1.4 DEGREES OF SANCTION AVAILABLE

Subject to these standards and the rules and laws which govern attorney disciplinary proceedings conducted by the State Bar, the following sanctions are available upon a finding or acknowledgment by a member of professional misconduct:

- (a) Admonition.
- (b) Reproval.
- (c) Suspension from the practice of law:
  - (i) — stayed suspension: the execution of suspension may be stayed for a period of from one year to five years only if such stay and performance of specified rehabilitative or probationary duties by the member during the period of the stay or probation is deemed consistent with the purposes of sanctions imposed upon the member as set forth in standard 1.3;
  - (ii) — actual suspension: suspension from the practice of law for a period of not less than thirty (30) days. Normally, actual suspensions imposed for a two (2) year or greater period shall require proof satisfactory to the State Bar Court of the member's rehabilitation, present fitness to practice and present learning and ability in the general law before the member shall be relieved of the actual suspension; or
  - (iii) — a stayed suspension which includes an actual suspension as a condition thereof.
- (d) Disbarment.
- (e) Any interim remedies or final discipline as authorized by section 6007(h), Business and Professions Code.

Eff. Jan. 1, 1986.

### 1.5 ADDITION OF REASONABLE CONDITIONS OR DUTIES TO ORDERS OR RECOMMENDATIONS OF REPROVAL OR SUSPENSION

Reasonable duties or conditions fairly related to the acts of professional misconduct and surrounding circumstances found or acknowledged by the member may be added to a recommendation or suspension or; pursuant to rule 956, California Rules of Court, to a reproof. Said duties or conditions may include, but are not limited to, any of the following:

- (a) a requirement that specified restitution be made or satisfaction of judgment(s) filed;
- (b) a requirement that the member take and pass an examination in professional responsibility;
- (c) a requirement that the member undertake treatment at his or her own expense for medical, psychological or psychiatric conditions or for problems of alcohol or substance abuse;
- (d) a requirement that the member undertake educational or rehabilitative work at his or her own expense regarding one or more fields of substantive law or law office management;
- (e) a requirement that the member be supervised by a probation monitor referee pursuant to the Rules of Procedure of the State Bar and that the member report to the State Bar as prescribed: compliance with the State Bar Act and Rules of Professional Conduct, the manner in which client funds or trust funds are handled (certified to by an accountant, if required) and such other reports as may be reasonable and appropriate in assessing the member's compliance with any duties or conditions imposed;
- (f) any other duty or condition consistent with the purposes of imposing a sanction for professional misconduct as set forth in standard 1.3.

Eff. Jan. 1, 1986.

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### 1.6 DETERMINATION OF THE APPROPRIATE SANCTION

- (a) The appropriate sanction for an act of professional misconduct shall be that set forth in the following standards for the particular act of misconduct found or acknowledged. If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions.
- (b) The appropriate sanction shall be the sanction imposed unless:
  - (i) Aggravating circumstances are found to surround the particular act of misconduct found or acknowledged and the net effect of those aggravating circumstances, by themselves and in balance with any mitigating circumstances found, demonstrates that a greater degree of sanction is required to fulfill the purposes of imposing sanctions set forth in standard 1.3. In that case, a greater degree of discipline than the appropriate sanction shall be imposed or recommended; or
  - (ii) Mitigating circumstances are found to surround the particular act of misconduct found or acknowledged and the net effect of those mitigating circumstances, by themselves and in balance with any aggravating circumstances found, demonstrates that the purposes of imposing sanctions set forth in standard 1.3 will be properly fulfilled if a lesser degree of sanction is imposed. In that case, a lesser degree of sanction than the appropriate sanction shall be imposed or recommended.
- (c) In applying these standards, any limitation on the consideration of mitigating circumstances contained in any of the standards of parts B or C shall control over any standard of part A.

Eff. Jan. 1, 1986.

## 1.7 EFFECT OF PRIOR DISCIPLINE

- (a) If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline as defined by standard 1.2(f), the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.
- (b) If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.
- (c) None of these standards shall require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment, authorized by these standards for an offense of professional misconduct.

Eff. Jan. 1, 1986.

## PART B. STANDARDS PERTAINING TO SANCTIONS FOR PROFESSIONAL MISCONDUCT FOUND OR ACKNOWLEDGED IN ORIGINAL DISCIPLINARY PROCEEDINGS

### 2.1 SCOPE.

This part shall pertain to the sanction to be imposed following offenses of professional misconduct of members found or acknowledged in original disciplinary proceedings. It shall exclude sanctions for misconduct following a member's conviction of crime pursuant to sections 6101-6102, Business and Professions Code.

Eff. Jan. 1, 1986.

## 2.2 OFFENSES INVOLVING ENTRUSTED FUNDS OR PROPERTY

- (a) Culpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances.
- (b) Culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the wilful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.

Eff. Jan. 1, 1986. Revised: January 1, 2001.

## 2.3 OFFENSES INVOLVING MORAL TURPITUDE, FRAUD, DISHONESTY OR CONCEALMENT

Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

Eff. Jan. 1, 1986.

**2.4 OFFENSES INVOLVING WILFUL FAILURE TO COMMUNICATE WITH THE CLIENT OR TO PERFORM SERVICES IN THE MATTER FOR WHICH THE MEMBER HAS BEEN RETAINED**

- (a) Culpability of a member of a pattern of wilfully failing to perform services demonstrating the member's abandonment of the causes in which he or she was retained shall result in disbarment.
- (b) Culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Eff. Jan. 1, 1986.

**2.5 OFFENSES INVOLVING A VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 6131**

Culpability of a member of violating the provisions of Business and Professions Code, section 6131 shall result in disbarment, irrespective of mitigating circumstances.

Eff. Jan. 1, 1986.

**2.6 OFFENSES INVOLVING OTHER SPECIFIED SECTIONS OF THE BUSINESS AND PROFESSIONS CODE**

Culpability of a member of a violation of any of the following provisions of the Business and Professions Code shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3:

- (a) Sections 6067 and 6068;
- (b) Sections 6103 through 6105;
- (c) Section 6106.1;
- (d) Sections 6125 and 6126;

- (e) Sections 6128 through 6130; or
- (f) Sections 6151 through 6153.

Eff. Jan. 1, 1986.

**2.7 OFFENSES INVOLVING AN AGREEMENT TO ENTER INTO CHARGE OR COLLECT AN UNCONSCIONABLE FEE FOR LEGAL SERVICES (RULE 4-200, RULES OF PROFESSIONAL CONDUCT)**

Culpability of a member of a wilful violation of that portion of rule 4-200, Rules of Professional Conduct re entering into an agreement for, charging or collecting an unconscionable fee for legal services shall result in at least a six-month actual suspension from the practice of law, irrespective of mitigating circumstances.

Eff. Jan. 1, 1986. Revised: January 1, 2001.

**2.8 OFFENSES INVOLVING VIOLATION OF RULE 3-300, RULES OF PROFESSIONAL CONDUCT RE BUSINESS TRANSACTIONS WITH A CLIENT**

Culpability of a member of a wilful violation of rule 3-300, Rules of Professional Conduct, shall result in suspension unless the extent of the member's misconduct and the harm to the client are minimal, in which case, the degree of discipline shall be reproof.

Eff. Jan. 1, 1986. Revised: January 1, 2001.

**2.9 OFFENSES INVOLVING A WILFUL VIOLATION OF RULE 1-110, RULES OF PROFESSIONAL CONDUCT**

Culpability of a member of a wilful violation of rule 1-110, Rules of Professional Conduct, shall result in suspension.

Eff. Jan. 1, 1986. Revised: January 1, 2001.



**2.10 OFFENSES INVOLVING A VIOLATION OF ANY PROVISION OF THE BUSINESS AND PROFESSIONS CODE NOT SPECIFIED IN ANY OTHER STANDARD OR A WILFUL VIOLATION OF A RULE OF PROFESSIONAL CONDUCT NOT SPECIFIED IN ANY OTHER STANDARD**

Culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or of a wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

Eff. Jan. 1, 1986.

**PART C. STANDARDS PERTAINING TO SANCTIONS FOR PROFESSIONAL MISCONDUCT FOLLOWING CONVICTION OF THE MEMBER OF A CRIME**

**3.1 SCOPE**

This part shall pertain to the sanction to be imposed following a member's conviction of crime, pursuant to sections 6101-6102, Business and Professions Code.

Eff. Jan. 1, 1986.

**3.2 CONVICTION OF A CRIME INVOLVING MORAL TURPITUDE**

Final conviction of a member of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime's commission shall result in disbarment. Only if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a two-year actual suspension, prospective to any interim suspension imposed, irrespective of mitigating circumstances.

Eff. Jan. 1, 1986.

**3.3 CONVICTION OF CERTAIN FELONIES**

Final conviction of a felony defined by section 6102(c) shall result in summary disbarment, irrespective of any mitigating circumstances.

Eff. Jan. 1, 1986.

**3.4 CONVICTION OF A CRIME NOT INVOLVING MORAL TURPITUDE BUT INVOLVING OTHER MISCONDUCT WARRANTING DISCIPLINE**

Final conviction of a member of a crime which does not involve moral turpitude inherently or in the facts and circumstances surrounding the crime's commission but which does involve other misconduct warranting discipline shall result in a sanction as prescribed under part B of these standards appropriate to the nature and extent of the misconduct found to have been committed by the member.

Eff. Jan. 1, 1986.

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